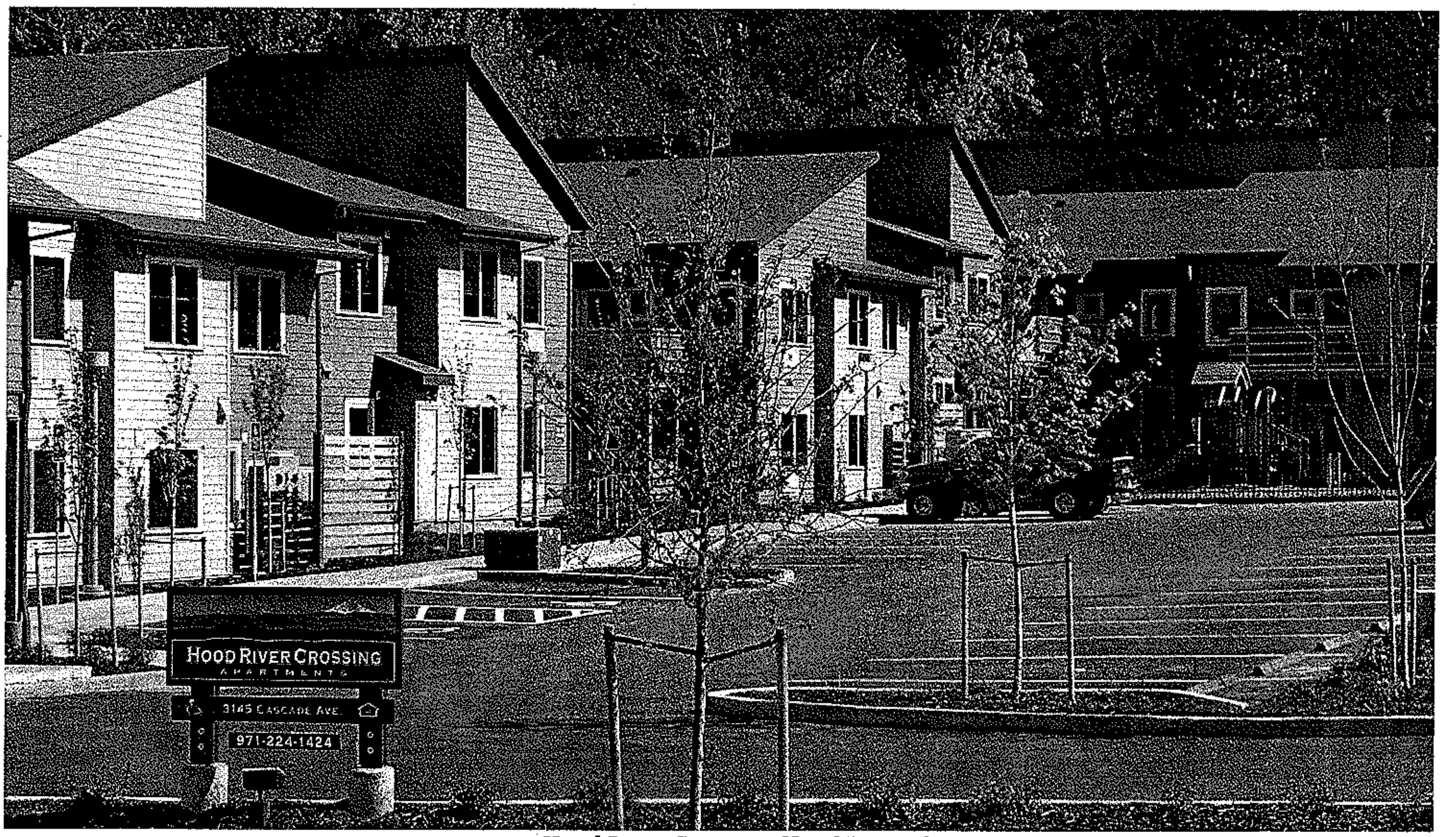
OREGON STATE HOUSING COUNCIL

January 6, 2012



Hood River Crossing, Hood River, OR
(New Construction; 40 Units; Family; Farmworker)

Meeting held at:
Oregon Housing and Community Services
725 Summer Street NE, Room 124 A/B
Salem, OR 97301
503.986.2005

OREGON STATE HOUSING COUNCIL

January 6, 2012

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Oregon State Housing Council

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What We Do Matters!

Council Members
John Epstein, Chair
Tammy Baney
Michael C. Fieldman
Adolph "Val" Valfre, Jr.
Jeana Woolley

STATE HOUSING COUNCIL MEETING

January 6, 2012

9:00 a.m.

Meeting Location:
Oregon Housing and Community Services
725 Summer Street NE, Room 124 A/B
Salem, OR 97301
(503.986.2005)

AGENDA

I.	**CALL TO ORDER**	**J. Epstein**
II.	**ROLL CALL**	**J. Epstein**
III.	**PUBLIC COMMENTS**	**J. Epstein**
IV.	**APPROVAL OF MINUTES**	**J. Epstein**
	A. Minutes of December 2, 2011 Meeting	
V.	**RESIDENTIAL CONSENT CALENDAR -- None**	
VI.	**NEW BUSINESS**	
	A. *The Yards at Union Station Phase C Apartments* (Portland, OR), Pass-Through Revenue Bond Financing Request	**S. Cullin**
	B. *Proposed 2012 Qualified Allocation Plan Changes/Comments*	**J. Enos**
VII.	**SPECIAL REPORTS -- None**	
VIII.	**OLD BUSINESS -- None**	
IX.	**REPORTS**	
	A. Oregon Homeownership Stabilization Initiative (OHSI) Update	**M. Auman**
	B. Report of the Chief Financial Officer	**N. Cain**
	C. Report of the Deputy Director	**R. Crager**
	D. Report of the Director	**M. Van Vliet**
	E. Report of the Chair	**J. Epstein**
X.	**FUTURE AGENDA ITEMS**	**M. Van Vliet**

OREGON STATE HOUSING COUNCIL
Minutes of Meeting

Meeting Location:
Oregon Housing and Community Services
725 Summer Street NE, Room 124 A/B
Salem, OR 97301

9:00 a.m.
December 2, 2011

MEMBERS PRESENT
John Epstein, Chair
Tammy Baney (via telephone)
Mike Fieldman
Adolph "Val" Valfre, Jr.
Jeana Woolley

MEMBERS ABSENT

GUESTS
Chuck Fisher, Salem-Keizer CDC
Michelle Deister, Legislative Fiscal Office
Tom Cusak, Oregon Housing Blog
Christel Alley, OHA

STAFF PRESENT
Margaret S. Van Vliet, Director
Rick Crager, Deputy Director
Nancy Cain, Chief Financial Officer
Karen Tolvstad, Policy, Strategy and Communication Division Administrator
Mike Auman, OHSI Administrator
Bill Carpenter, Chief Information Officer
Debbie Price, Regional Advisor to the Department
Karen Clearwater, Regional Advisor to the Department
Bob Larson, Debt Management Section Manager
Roseanne Ward, Financial Services Section Manager
Roberto Franco, Single Family Programs Manager
Heather Pate, MultiFamily Programs Section Manager
Jodi Enos, LIHTC Tax Credit Program Coordinator
Rich Malloy, NSP & Policy Coordinator
Lisa Joyce, Legislative Policy Advisor
Craig Tillotson, Debt Accountant
Shelly Cullin, Loan Officer
Janna Graham, Loan Specialist
Joyce Robertson, Loan Officer
Dan Mahoney, Loan Officer
Laurie LeCours, Debt Officer
Jo Rawlins, Recorder

I. CALL TO ORDER: Chair Epstein calls the December 2, 2011 meeting to order at 9:05 a.m., and welcomes new Housing Council member, Adolph "Val" Valfre, Jr., of the Washington County Housing Authority.

II. ROLL CALL: Chair Epstein asks for roll call. **Present: Tammy Baney (via telephone), Mike Fieldman, Val Valfre, Jeana Woolley (arrived at 9:06 a.m.) and Chair Epstein.**

III. PUBLIC COMMENT: Tom Cusack distributes a report titled *Housing as Platform for Oregon Healthy Kids,* and gives an update to a discussion he had several months ago with Council about the relationship between assisted housing and children. Recently, there was a meeting of self-sufficiency coordinators in Portland; the housing authority directors recently had a discussion at one of their meetings about trying to figure out a way to coordinate programs; and the HUD office has reviewed the family self-sufficiency program. There are 1,100 families participating in Oregon that receive special counseling from coordinators. There is a data element that reports whether or not a family is enrolled in the Medicaid program, and 35% of all the families do not report that they are covered by Medicaid. He believes it is fair to assume that if there is 35% under-enrollment for that program, it is likely that other programs would report at least that much, if not much more. He compared other programs around the state, trying to emphasize the preliminary numbers. His report is broken down by program and shows the number of those not enrolled in the Healthy Kids program. **Woolley** asks Bill Carpenter if the data he has been working on shows the housing the agency has funded, who is in the housing and who is served by county. **Carpenter** says yes.

IV. <u>APPROVAL OF MINUTES</u>

A. **Chair Epstein** asks if there are any corrections to the September 19, 2011 Minutes. There being no corrections, the Motion was read:

> **MOTION: Fieldman moves that the Housing Council approve the Minutes of the September 19, 2011 Council meeting.**
>
> **VOTE: In a roll call vote the motion passes. Members Present: Mike Fieldman, Val Valfre, Jeana Woolley and Chair Epstein. Tammy Baney abstains.**

B. **Chair Epstein** asks if there are any corrections to the October 31, 2011 Minutes. There being no corrections, the Motion was read:

> **MOTION: Woolley moves that the Housing Council approve the Minutes of the October 31, 2011 Council meeting.**
>
> **VOTE: In a roll call vote the motion passes. Members Present: Tammy Baney, Mike Fieldman, Jeana Woolley and Chair Epstein. Val Valfre abstains.**

V. <u>HONORARY RESOLUTION</u>: Chair Epstein announces that Nancy McLaughlin, an esteemed member of the Council who had stepped down this year due to illness, recently passed away. For those who knew her, she was very involved in Council, putting in 150% even while she was ill. That was a reflection of the kind of person she was -- when she made a commitment to do something, she committed entirely to it. At the suggestion of Jeana Woolley, Epstein asks that Council adopt a resolution in Nancy's honor. *Woolley reads the resolution attached to these minutes.*

> **VOTE: In a roll call vote, the resolution is accepted and approved. Members Present: Tammy Baney:** Absolutely! **Mike Fieldman:** Yes, she will be greatly missed. It was my honor to have served with her. I appreciate having had the opportunity. **Val Valfre:** Definitely, yes. **Jeana Woolley:** Yes. **Chair Epstein.** Yes. It is so moved.

Baney adds that she was a remarkable woman.

VI. <u>RESIDENTIAL CONSENT CALENDAR</u>: None.

VII. NEW BUSINESS:

A. *Riverview Terrace Apartments* (Salem, OR), Predevelopment Loan Request. **Jodi Enos,** LIHTC Tax Credit Program Coordinator, introduces **Chuck Fisher**, Executive Director, Salem-Keizer Community Development Corporation. **Enos** reports that Salem-Keizer Community Development Corporation (SKCDC) has requested a predevelopment loan in the amount of $285,000 for acquisition of property to be used for the Riverview Terrace Apartments, a proposed 40-unit workforce housing development located on NW Wallace Road in Salem. She gives an overview of the write-up contained in Council's packet. **Woolley** asks if most of the department's loans are now at 95%. **Enos** explains that we can go up to 100%, but most of the loans in the program fall within the 95% to 100% range. **Shelly Cullin** adds that they try to look at 95%, but have allowed 100%. **Rick Crager** says the Finance Committee gets a report and that could be passed on to the Council. **Epstein** suggests that if the report could also include the date the loan originated, it would give Council an indication of the original loan-to-value. **Cullin** reminds Council that the approval limits changed so that Council doesn't see loans under $200,000, but that report would include those under $200,000.

MOTION: Woolley moves that the Oregon State Housing Council approve a Predevelopment Loan in an amount not to exceed $285,000 at an interest rate of 5% per annum to Salem-Keizer Community Development Corporation for the acquisition of land located in Salem, Oregon.

VOTE: In a roll call vote the motion passes. Members Present: Tammy Baney, Mike Fieldman, Val Valfre, Jeana Woolley and Chair Epstein.

B. *Approval of 2012 Council Meeting Dates.* **Margaret Van Vliet** asks Council if they approve the proposed 2012 meeting dates (January 6; February 3; March 2; April 6; May 4; June 1; July 13; August 10; September 7; November 2; December 7). **Fieldman** points out that he will not be able to attend the March 2nd meeting. **Valfre** asks if a retreat will be added to the calendar once the other two Council members are appointed. **Van Vliet** explains that these dates are for Council's public meetings, and a retreat would be scheduled separately and would be for a full day. One of the meetings might also be held in another location in the state.

MOTION: Valfre moves that the Oregon State Housing Council approve the proposed 2012 Housing Council meeting dates.

VOTE: In a roll call vote the motion passes. Members Present: Tammy Baney, Mike Fieldman, Val Valfre, Jeana Woolley and Chair Epstein.

VIII. SPECIAL REPORTS: None.

IX. OLD BUSINESS: None.

X. REPORTS:

A. *Single Family Program Loan Portfolio.* **Bob Larson,** Debt Management Section Manager, distributes copies of a Residential Loan Program Update and gives an overview and status report of the single family loan portfolio. As of October, the loan portfolio has

$958,000,000 outstanding. There are 850 loans. The program has $59,000,000 of funds available, of which there are $35,000,000 in commitments. The program is currently offering 3.5%, three year fixed-rate loans, with a 3% assistance option. Delinquencies are at 7.32%, which includes both delinquencies and foreclosures. Homestreet Bank continues to be the largest servicer, with about 42% of the portfolio. The breakdown of the portfolio by insurance company shows that FHA continues to be the largest insurer, with 42% of the portfolio. 25.2% are uninsured, and for those, the loan-to-value is at 80% or less. Private Mortgage Insurance is at 22%, but the department is no longer using PMIs because of the downgrades of the PMIs. 11% are with Rural Development. The portfolio loans by interest rate indicate that the average is about 5.3%. That takes into account all mortgage loans that have been financed under the mortgage revenue bond indenture and our housing revenue bond indenture, which is the one we are currently issuing bonds out of and financing loans with. The delinquency and foreclosure rates show the trend, going back to 2006, has been an upward slope. Before 2006, in 2004 and 2005, there were some steep declines because of the low interest rates. In 2007, there were 8 foreclosures; 2011 shows that, through October 1, there are 121 properties that have been acquired. The average loss in all cases has significantly increased. This report shows that, through prudent financial management, we have been able to weather the storm and hope to continue.

Epstein asks if we are putting everything into FHA now since we no longer are using PMI. **Larson** says that FHA and RD have the 80% loan-to-value. **Epstein** asks about refinancing. **Larson** states that the department cannot do refinances as part of the bond program under federal statute. **Epstein** asks how the foreclosures are handled and once it is foreclosed, who handles the broker. **Larson** says they are all handled through our servicer, and it depends on the insurance. FHA's are taken care of through FHA. For the uninsured and RD, the property is taken back. **Epstein** asks if when he said on average our loss is $20,000 per home, is he saying that with 121 homes our hit is $2.4M? **Larson** says yes. **Van Vliet** explains that it is factored into the financial stability of the indenture itself, and that the rating agencies and our financial advisors are helping us look at that. **Epstein** asks, if the economy were to become stronger, if the $2.4M would come back to the agency when the bonds are paid off. **Larson** says they are all a part of the indenture. **Crager** explains that, through our financial advisors, we have a comprehensive cash flow analysis and we have been conservative in terms of what we have projected for losses. He assumes that it is higher than the $2.4M. The bottom line is that we are sustaining losses; however, from an overall indenture standpoint, we are maintaining a positive asset liability ratio. **Van Vliet** adds that part of what she thinks he is getting at is whether or not the cash that we pull out of the indenture to help fund our operations is compromised. She says it is compromised for this and many other reasons. What we have projected out for the next three years, for example, has not compromised our ability to do what we have planned.

Fieldman asks if he is seeing any trends within the year with foreclosures and delinquencies, or if things seem to be staying at the same levels. **Larson** answers that as the year has gone on, they are slowing down, but it does not appear to have turned the corner. **Woolley** asks if there are there other things, based on his analysis, that he thinks Council should be thinking about from a policy standpoint based on where we are at and what the trends are. **Larson** states that they are embarking on a comprehensive look at the entire program. **Crager** adds that it is clear that the way the department has done business for years with the whole loan program is ending. If the department is going to continue to provide support through homeownership it will have to look different, and the department is beginning to study that. From a program standpoint, things will be different. **Woolley** asks if he has any idea on what directions that will go. **Crager** responds that both the department and its financial advisors have a lot of ideas, and the department has to be concerned about how to administer things. There are a variety of different products; mortgage backed securities; and mortgage credit certificates. The extension of the NIBP could provide proceeds somewhere between $60M-$70M of total loans available, but the terms of the NIBP are not as favorable as they were under the last federal proposal.

Van Vliet says it is her intent that the department stay pretty close to what is happening nationally and understands best practices and who is trying different business models. As Council moves into strategic planning, it may want to select someone to help go deeper and think of those strategic questions.

B. *Oregon Homeownership Stabilization Initiative (OHSI) Update.* **Mike Auman,** OHSI Administrator, reports that Oregon has become the national leader in the Hardest Hit Fund program delivery, both in people served and dollars spent. Oregon is also the leader in the Homeowner Education Program. Video and worksheets are available on the OHSI website to help individuals figure out what homeownership is and how they can best take advantage of the program. There are over 4,000 people receiving assistance from the Mortgage Payment Assistance program (over $30M). Assistance has been provided in every county in Oregon. Over 19,000 people requested assistance. **Woolley** asks about the status of the partners that had not signed agreements, and if payments were flowing to all those that were accepted into the program. **Auman** says there are still some stragglers. They are in the process of signing a second round of contracts for future programs. In terms of servicers that are participating, they have 130 who have agreed to participate. They are also launching a variation that will allow them to assist participants whose bank is not participating. They are down to a dozen banks that are not participating and those are not participating on a nationwide basis. There are around 100 loans without servicers, but they have found a work-around so payments can flow. **Van Vliet** says OHSI was not sufficiently staffed to deal with the 19,000 applicants, so Treasury authorized them to spend more on admin. Recently more staff have been hired in limited duration positions, so she believes they are getting there.

Auman reports that the revised Mortgage Payment Assistance program is being launched in Klamath and Lake counties, which will focus on unemployed homeowners. He anticipates being able to open the program in the metro area in early 2012, and going statewide in March. The program will honor the county slots in rural Oregon that were not filled in the first program. The Loan Preservation Assistance program will be launched in conjunction with the Mortgage Assistance Program. That is a program that will be able to reinstate arrearages up to $10,000 for those that are in the Mortgage Payment Assistance program. There will also be a program available for people for preservation of their loan up to $20,000. One component of the $20,000 benefit is the sustainability of the loan. **Crager** asks if the $20,000 benefit that he referred to is for non-MPA clients and is also available for people that have been through the MPA that can demonstrate financial sustainability. **Auman** answers yes.

Auman states that the Loan Refinance Assistance Pilot Project will be in Deschutes and Jackson counties. He anticipates that they will have people in that program by the year's end. **Woolley** asks if that program will broaden out to other counties at some point. **Crager** says yes. This is a pilot and those two counties were selected because they were areas with the highest number of underwater loans. They will need to see how successful they are in other areas and, at some point, it could potentially broaden out to other counties. **Woolley** asks if that is the only program where we are trying to restructure mortgages that are underwater. **Crager** says yes, in terms of identifying for underwater loans. We have been trying to figure out some kind of modification-type program, but we have not been able to get that one off the ground. We may test that with our own portfolio. **Auman** comments that the modification program, on a national basis, has not been as successful as some of the other programs, and they are trying to funnel money into the programs that most quickly get to the people that need it. **Woolley** asks if there is an issue that the banks are not cooperating. **Crager** says that in some cases, that may be. **Auman** states that it is more a cooperation/coordination issue. **Crager** adds that one of the things US Treasury pushed for was that any type of modification program have some form of matching resources. Bank of America has come up with a program that might work. **Woolley** comments that this is a major issue given the economy and given how many folks are just permanently underwater. **Van Vliet** states that it is helpful to have Council press us on this so we can have that leverage with Treasury and be able to say that it is a policy priority. We have heard similar comments from legislators. There are lots of other mortgage relief programs having varying levels of success nationally, so this is a very particular slice and it is TARP money. Because of that you have to get some amount of bank buy-in. HUD and FHA are doing other things in the realm of mortgage relief, so one of the things that she would like our story to include is where this fits. The problem takes on many dimensions and is not going to do everything for everybody. We should be clear about what it can do and press the envelope.

Auman reports that nationally the transition program has not proven to be very successful and they do not plan to roll out any kind of transition assistance program. **Crager** adds that there are a lot of other programs that help with the transition, such as Cash for Keys, and Treasury has another program that offers assistance. Our Homeownership Education program, which is very unique, will help people that are exiting Mortgage Payment Assistance to recognize some of those other options.

C. *NSP Update.* **Rich Malloy,** NSP and Policy Coordinator, reports that in terms of progress, HUD looks at two things: How fast did you spend the money, and how fast did you get the property occupied? In terms of spending the money we did very well. We are over 100% on NSP1, and on NSP2 we are leading the nation. NSP3 is small, and they are just getting started. They have a ways to go on occupancy, so that is the big push now. They helped Habitat buy the land to build 80 or 90 homes throughout all three phases of the program, and in 2012 they hope to get some of the properties finished. It is hoped that by the end of next year, they will have NSP1 and 2 spent, and occupied by February/March of 2013. In NSP there is an initiative to do supportive housing for homeless persons. Since some of the proposals are large enough that they would need to come to Housing Council for approval; however, they have to do the acquisition in less than 60 days, so Council has given OHCS staff the purview to take those to the Finance Committee internally. The original goal for this program was 10 units, and we are at 28 and probably headed for 34-36. **Woolley** asks if the issue with occupancy is just the timeline for redevelopment, and if the lag is between when we give them the first money and they buy the units or land. **Malloy** says the primary concern is the ability for Habitat affiliates to put the money together to build the new homes. **Woolley** asks if it was strategically decided to give a portion of this money to Habitat, where they are essentially selling homes. **Malloy** says they did this for two reasons: 1) 25% of the funds have to go to low-income households; and 2) Habitat has the best, and only, model for low-income homeownership. HUD has agreed to the Habitat model nationwide. **Woolley** asks if the funds were specifically to create homeownership opportunities for low income, or if they could have been used for rentals. **Malloy** answers that it could have been used for rentals, and that it is often up to the communities. **Valfre** states that the dimensions on the time period are expenditure deadlines, but it appeared that occupancy was tied to the same **deadline. Malloy** explains that it varies with each program. NSP1 had to have all the money spent and be occupied by March of 2013; with NSP2, half of the money has to be spent by February 2012, and all of the money by 2013. **Valfre** asks how many are sales versus rentals. **Malloy** says that new construction is around 15%. The bulk of the money, if all three programs were combined, would be in acquisition/rehab, and that generally ends up in rental, or sale by the land trust, which is the largest amount of the money (45% to 50%). **Valfre** asks why the model of land trust was not used more. **Malloy** explains that it was a matter of the location of the land trust and where they operated. Clackamas County, Proud Ground and Housing Works use the model. Those will each come in and the money will then generate more to do more properties. **Valfre** points out that the land banking in the report indicated there was just one in Medford, and asks why that was not elsewhere. **Malloy** says it is difficult to do them, and land banking was not offered in NSP 2 or 3 because they wanted to focus the funds for acquisition of available units.

D. *Report of the Chief Financial Officer.* **Nancy Cain** reports that the new issuance bond program has been extended, allowing the department to sell bonds through the US Treasury. The terms of the extension are not nearly as beneficial as the existing terms. It is expected the interest rates paid on those bonds will go up as much as 150 to 200 basis points. We will still be able to use that money, but we will have to use more zeros, which means money loaned at 0% interest for other issues can be blended to bring down interest rates. There is about $39M available. In the area of financial statements, net assets were increased in the enterprise funds by $3.2M.

E. *Report of the Deputy Director.* **Rick Crager** reports the following:

- The department recently appeared before the subcommittee on Transportation and Economic Development and the House Consumer Protection Committee regarding the Hardest Hit Fund. The special session of the Legislature is coming up in February. The main focus for the February session will be a proposal by the Rural Housing Task Force, chaired by Mike Fieldman, and carried by Representative Huffman. The proposal is around workforce housing. He says it would be beneficial if Council could support the proposal. The department's tax credits and tax exempt bond programs serve a population that is typically 60% AMI and below. Other state programs, such as the Housing Trust Funds, General Housing Account Program, and Farmworker Housing Development, are set by state statute, so there is some flexibility. Part of the proposal being looked at is allowing state programs to serve people that are 120% AMI and below, but only with the approval of an exception by the State Housing Council. Anyone that is interested in exceeding the 60% limit would have to come to the Council and would need to demonstrate why in their community there needed to be that exception. There are examples of where people are earning minimum wage and they do not qualify for our programs. There will be a lot of rulemaking that will have to occur around this if this concept is accepted. **Woolley** asks if the proposal would be for specific geographic areas. **Crager** says that would be part of the rulemaking piece, and Council would govern that. This rule would give Council the ability in state statute to go above 60% AMI. **Fieldman** adds that it would provide Council with some real flexibility to be able to respond to unique local issues. **Woolley** asks if it would get factored into the CFC. **Crager** says yes. He says he wants to make sure the Council members are comfortable with putting the Council as the approving body for this exception. **Woolley** says she wholeheartedly supports it. **Crager** adds the proposal is supported by the Governor's Office and Greg Wolf, who supports the Regional Solutions Teams. The Regional Solutions Team in Eastern Oregon has workforce housing as their highest priority. **Epstein** asks if the department needs Council's formal acceptance. **Crager** says no, just Council's blessing to move forward. It will be Representative Huffman's bill. **Epstein** says the department can move forward with the Council's support. **Valfre** says it is a great idea, and he likes the fact that the commuting patterns have been factored in, which is important for the rural areas.

Van Vliet cautions that there may be some that would fear that this opens the door to the department not serving the poorest people in all cases. There will be some who will want the money to go to the very poorest in each community. She says she would not want to represent to Council that this will be a slam-dunk. **Fieldman** states that when you look at the actual dollar amounts, you will see that the lowest incomes are being reached. The process beforehand is to develop supporters within our networks. **Crager** says there are things that the department can do within its existing programs. With tax-exempt bonds there is flexibility already built in to serve higher income populations. There are also some opportunities around the guarantee program. One area specifically is Boardman. They have seen huge amounts of commuters into the area and the department, in collaboration with Oregon Solutions, is looking into where they can address some of the workforce housing issue. There are some areas on the coast they are looking at as well.

- There is nothing new to report on the Project Based Contract Administration (PBCA). We continue to wait for HUD to come up with a new NOFA and help to educate and clarify our position from a legal standpoint. **Woolley** asks if they extended our current contract. **Crager** says yes, until March 31, 2012. However, they did take off some responsibilities for the department because they are paying us a lower rate.
- The LEAN process is still taking place in the multifamily division. It has been a great exercise for staff to look at existing processes and figure out what can be streamlined. 2013 is the target for completion of the streamlining process.

F. *Report of the Director.* **Margaret Van Vliet** reports the following:

- She is very glad to be with the agency and thanks Rick for his many months of service as the acting director. Clearly, Rick has done fabulous work, keeping things running smoothly. She introduces Karen Tolvstad, the new administrator of the Policy, Strategy and Communication Division. Karen has a strong background in community redevelopment, community reinvestment, corporate communications and strategic planning for a variety of nonprofits and other organizations. She will play a key role in how we think about policy going forward, strategic planning and strategic thinking towards what this agency will look like in the future. Lisa Joyce will work with her on legislative and communication matters as well. The Regional Advisors to the Department have been moved under Karen's leadership. The RADs have reported to Bob Gillespie, the Housing Division Administrator, who plans to retire at the end of this fiscal year. Bob will play a key role in helping with that transition.
- She is continuing to understand the agency's workings internally, but also trying to keep an eye externally on what is happening nationally. She says it is important to understand national trends. Everyone is going through similar pain. 19 states have Hardest Hit Funds. There are 41 states that are appealing the PBCA contract administration problem with HUD. Every state that has an HFA is looking at how they do single and multifamily bond financing. She is also looking externally at the Governor's Ten Year Plan for Oregon. The plan will help guide how state agencies deliver services, what Oregonians can expect from their state government in the delivery of services, and it is anchored in the shared values and the set of seven outcome areas that we hope to gain consensus on. The seven outcome areas are: Healthy People, Healthy Environment, Livable Communities, Jobs and Economy, Safety, Good Government and Education. The agency has the opportunity to contribute to all of the outcomes in many ways. The work we do is community-based, anti-poverty issues. She says she is optimistic and hopeful about the ability to bring this agency to those big conversations about where this state is going. The department funds a lot of programs and services, and it has partners that will help make or break the achievement of the seven outcomes. We will budget and line up our strategic plan in this way. The First Lady has indicated that she is

likely to take up poverty, hunger, and homelessness as one of her major initiatives. Part of what that is going to mean is that against those seven outcomes there will be some lenses that state agencies will be asked to bring to the problem. One of the lenses is how does it alleviate poverty? The other overlay, which is related, but slightly different, but will cut across all, is social equity or diversity and inclusion. It is her understanding that the Governor's Office is going to invite all the state agency boards and commissions to a meeting to hear from the Governor directly what this change means for state government.

G. *Report of the Chair.* **John Epstein** welcomes Val Valfre to Housing Council and Margaret to her first official meeting. He also thanks Mike Fieldman for his great participation on the Rural Housing Task Force. He says he wants to thank the staff of OHCS. It has been a turbulent year, with budget cuts, furloughs, and changes in management. Despite that, staff have made great presentations to Council and they have stayed on course with the mission. He thanks Jo for her relationship with Council and getting them material in a timely manner and keeping them on task. He says it was disheartening to see that Oregon ranks number one in hunger. He would like to improve upon the state's poverty numbers and put more focus around that. Historically, Council has been very housing oriented, and he would like to see this Council be more active around some of the social service components and be more proactive in broadening the department's outreach.

XI. FUTURE AGENDA ITEMS.

- LEAN Report
- Governor's 10-Year Plan
- OHCS/CAPO Joint Meeting
- Social Service Outreach

Chair Epstein adjourns the meeting at 11:22 a.m.

John Epstein, Chair **DATE**
Oregon State Housing Council

Margaret S. Van Vliet, Director **DATE**
Oregon Housing and Community Services

JOHN A. KITZHABER, MD
GOVERNOR

OREGON STATE HOUSING COUNCIL RESOLUTION

WHEREAS, our colleague, Nancy Jane McLaughlin was born in Hanford, California in 1950, and passed away on November 20, 2011.

WHEREAS, Nancy attended the University of Oregon, California State University-Sacramento, and the Executive Program of the University of Michigan School of Business Administration.

WHEREAS, Nancy became a national leader in affordable housing and community development.

WHEREAS, Nancy was appointed by Governor Kulongoski to serve on the Oregon State Housing Council, and served from October 1, 2009 until August 1, 2011.

WHEREAS, Nancy brought her experience, knowledge, leadership skills and passion to help create and implement programs and policies for affordable housing in Oregon, which benefited and improved the lives of its poor and working class citizens.

WHEREAS, during Nancy's tenure on Council, she assumed leadership of the Council's Strategic Plan Strategy, and helped build a framework that welcomes and solicits partners' and stakeholders' comments, concerns and advice on state housing policy and programs.

WHEREAS, Nancy was a gifted and respected leader within the housing and community services community in Oregon.

WHEREAS, her spirit and strength as a leader were conveyed through her courage to speak up, lead by example, promote collaborative partnerships, and think outside the box.

WHEREAS, Nancy strongly believed in the ideal that every individual needs to fully participate in bettering the world we live in, and willingly shared her talents for the benefit of the greater community.

WHEREAS, Nancy McLaughlin spent her professional life advocating and working to improve the lives of those less fortunate.

NOW, THEREFORE, BE IT RESOLVED, that the Oregon State Housing Council adopts this resolution, acknowledging and honoring Nancy McLaughlin's many and considerable accomplishments in bettering the lives of Oregon's poor and less-fortunate citizens, and expresses our sincere gratitude and appreciation for her outstanding contributions and service on the State Housing Council.

Adopted by the Oregon State Housing Council on December 2, 2011.

Oregon State Housing Council

By ______________________
John Epstein, Chair

254 STATE CAPITOL, SALEM 97301-4047 (503) 378-3111 FAX (503) 378-4863
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The Yards at Union Station Phase C Apartments

Pass-Through Revenue Bond Request (FC and HC Approval)
4% Low Income Housing Tax Credit Request (FC Approved 12-20-11)

Executive Summary

Project Owner:	The Yards Phase C LP, an Oregon LP GSL Properties, Inc., general partner City Real Estate Advisors, Inc., limited partner
Project:	The Yards at Union Station Phase C Apartments 615 NW Naito Blvd., Portland, Oregon 97204
Description:	The Yards at Union Station Phase C Apartments are a proposed 80 unit affordable housing project in Portland, Oregon.
Pass-Through Revenue Bond Request:	**$7,657,706** *$4,830,000 (permanent loan)* *$2,827,706 (Construction/Bridge loan)*
Bond Series:	Housing Development Revenue Bonds 2012 Series A-1 and 2012 Series A-2
Bond Fees:	$133,131.18 *(collected at closing)*
Underwriting Rate:	5.40% 30 year amortization
Appraised Value:	$6,420,000 *(Restricted Rent @ Stabilization)* *$11,220,000 (Restricted Rent @ Stabilization w/beneficial financing value)*
Debt Coverage Ratio (DCR):	1.24 :1 *(estimated first full year of operation)*
4% LIHTC Annual Allocation Request:	**$548,372** (est. equity: $4,797,777) $35,644.18 *(LIHTC Reservation fee, collected at bond closing)*
Affordability Period:	60 Years
Target Population:	Families at or below 60% AMI
Finance Committee Meeting:	Voting to Approve: 5 Voting to Decline: Absent:

/s/ Rick Crager
Rick Crager, Finance Committee Chair

December 20, 2011
Date

/s/ Margaret Van Vliet
Margaret Van Vliet, Director

December 20 , 2011
Date

BOND RECOMMENDED MOTION: To approve a Pass-Through Revenue Bond Financing in an amount not to exceed $7,700,000 to The Yards Phase C LP for the new construction of The Yards at Union Station Phase C Apartments, subject to borrower meeting OHCS, Chase Bank, Portland Housing Bureau and City Real Estate Advisors, Inc. underwriting and closing criteria, documentation satisfactory to legal counsel and Treasurer approval for the bond sale.

Key Participants/Financial Team:

Bond Issuer:	**Oregon Housing and Community Services (OHCS)**
Borrower:	**The Yards Phase C LP**
General Partner:	**GSL Properties, Inc.**
Borrower Counsel:	**Roy Lambert, Schwabe, Williamson & Wyatt**
Borrower Consultant:	**Ron Lehr, Wedbush Securities Inc.**
Management Agent:	**GSL Properties, Inc.**
Bond Counsel:	**Orrick, Herrington & Sutcliffe LLP**
Financial Advisor:	**Caine Mitter & Associates Inc.**
Trustee:	**Bank of New York Mellon Trust Company**
Construction Lender:	**Chase Bank**
Permanent Lender:	**Chase Bank**
Lender Counsel:	**Brian Hulse and Anthony Caso**
Secondary Lender:	**Portland Housing Bureau, Siobian Beddow**
Architect:	**OTAK**
General Contractor:	**Walsh Construction**
Tax Credit Investor:	**City Real Estate Advisors, Inc.**

Building Information:

Total Number of Affordable Units	80 units
Total Number of Affordable Rental Units	80 units
Total Building Square Footage:	74,528 sq ft
Total Residential Square Footage:	56,743 sq ft
Total Residential Common Area Square Footage:	17,785 sq ft
Number of Floors:	5-story building
Year Built:	New Construction (est. completion 2013)
Serviced by Elevator:	☒ Yes ☐ No ☐ N/A
Construction Type:	☒ New Construc. ☐ Acq/Rehab
Currently Occupied:	☐ Yes ☒ No ☐ N/A
Commercial Space:	☐ Yes ☒ No

Parking:	A total of 35 spaces will be covered with the remaining 10 consisting of 10 open surface spaces. It is assumed that there will be a total of 46 off-street parking spaces available. The parking ratio (0.58 to 1) is at the low end of the typical range but is considered reasonable recognizing the urban location and proximity to light rail.
Amenities:	The project will have a community room, lounge and fitness center on the ground floor. Bike storage will be available in north garage and each floor will have storage units available (for a fee). Laundry facilities will be located on the 2nd and 3rd floors.
Addition Project Notes:	The larger Yards at Union Station project is a multiphase residential and retail redevelopment of a former 7 acre brownfield behind Union Station sited on the old Northern Pacific Terminal freight yard. The

	multiphase redevelopment project was honored with the EPA's Region 10 Phoenix award in 2000 for excellence in brownfield redevelopment.

OHCS Reviews:

OHCS Architectural Review:	☒ Acceptable Date: February 9, 2011
OHCS Management Agent Review	☒ Acceptable Date: November 29, 2011
OHCS Reviewed Resident Services	☒ Acceptable Date: December 5, 2011
OHCS Subsidy Layering	☒ Acceptable Date: December 13, 2011
Meets Allowable Zoning Criteria:	☒ Yes ☐ No ☐ N/A The site is zoned Central Commercial with Design Overlay (CXd). Permitted uses include: multifamily, retail, office, medical, schools
Environmental Reports Received/Reviewed	☒ Yes ☐ No A Phase I report prepared by AMEC Earth & Environmental, Inc.
Geotechnical Report Received/Reviewed	☒ Yes ☐ No ☐ N/A Geotech report completed by GRI Geotechnical & Environmental Consultants
Realistic Development Schedule	☒ Yes ☐ No Construction begins: 1/31/2012 Construction completed: 4/30/2013 Marketing begins: 2/28/2013 Lease up completed: 11/30/2013

Market Information:

Appraisal Completed By:	Colliers International Valuation & Advisory Services
Effective Date:	October 11, 2011
OHCS Market Analysis	☒ Yes ☐ No ☐ N/A Review completed by Mike McHam, OHCS Appraiser & Market Analyst- November 15, 2011
Rents 10% Below Market	☒ Yes ☐ No ☐ N/A
Lender Review/Meets Underwriting Criteria	☒ Yes ☐ No
Investor Review/Meets Underwriting Criteria	☒ Yes ☐ No

Population

- The Portland-Vancouver-Hillsboro MSA contains approximately 56% of Oregon's total population.
- The MSA had a 2010 population of 2,255,276, which is projected to grow to 2,412,000 by 2015.
- Population growth for 2010 to 2015 for the MSA is projected at 1.4%, ahead of Oregon (1.0%) and the nation (0.8%).
- The number of households is expected to grow at an annual 1.35% over the next five years to a total of 926,959.
- The MSA has a comparatively high percentage of renter occupied households at 34.0%. The project's immediate area has a renter ratio much higher at 74.3%.
- Population growth is expected to occur in the immediate area of the subject over the next five (5) years.

Income

- The MSA median household income for 2010 was $61,823.
- Median income is well above the remainder of Oregon and 13.6% higher than the United States at $54,442.
- Median income is anticipated to grow at an annual rate of 2.5% over the next five-year period.
- Average household income is $42,661 in the immediate area of the subject.

Employment

- The top three employers in the metro area are Intel (15,228), Providence Health Care (13,831) and Oregon Health and Science University (13,283).
- Current job growth is occurring in manufacturing, trade-transportation-utilities, business and professional services, and education and health services.
- MSA unemployment stood at 5.9% in 2008, increased to 10.6% in 2009 and as of September 2011, stands at 9.1%.
- Employment figures indicate the economy is on a slow, positive upswing with a projected growth rate in employment of slightly less than 1.0% for the next ten years.

Supply

- Significant new supply has been added to the downtown Portland submarket since 2008, both through construction and conversion.
- None of these units reportedly compete with the proposed subject.
- Multi-family building permits have declined significantly since a peak in 2007. Data for 2011 is demonstrating some improvement over 2009/10 in Portland and Multnomah County.

Demand

- The downtown submarket conventional apartment vacancy currently stands at 2.4% for new construction product. Rents are increasing and concessions are gradually disappearing from the submarket.
- The downtown restricted rent vacancy is at an estimated current 2.6% with little-to- no concessions. Project absorption data indicates a healthy market for restricted units.
- The project is anticipated to absorb and compete well in the current and foreseeable market and submarket.

Lender's Valuation Analysis:

A complete appraisal report by Colliers International Valuation & Advisory Services was completed October 11, 2011. Concluded values are presented below:

Valuation	Interest Appraised	Date	Value
Market Value - As Is	Fee Simple	10-4-2011	$890,000
Hypothetical Market Value – Upon Completion	Fee Simple	3-1-2013	$10,560,000
Hypothetical Market Value – Upon Stabilization	Fee Simple	8-1-2013	$10,800,000
Restricted Rent Value – Completion	Fee Simple	3-1-2013	$6,290,000
Restricted Rent Value- Stabilization	Fee Simple	8-1-2013	$6,420,000
Value of Tax Credits			$4,800,000
Restricted Rent Value at Stabilization + Value of Tax Credits			**$11,220,000**

JP Morgan Chase's underwriting criteria has a maximum 80% loan-to-value. For the construction loan, JP Morgan Chase uses Restricted Rent Value at Stabilization, plus the value of the tax credits, to meet this requirement. During the construction period, the loan-to-value is 68%. However, in determining loan-to-value for the permanent loan, Chase uses only the Restricted Rent Value at Stabilization. The loan-to-value at permanent loan conversion is assumed at 75%.

Development & Financing Team:

Borrowing Entity	The Yards Phase C LP
General Partner	GSL Properties, Inc.
In Good Standing w/OHCS	☒ Yes ☐ No
Construction/Permanent Lender	Chase Bank
Credit Underwriting Approved	☒ Yes ☐ No Date: 12/2 /11
Commitment to Close w/out Substantive Credit or Project Conditions	☒ Yes ☐ No Date: 12/2/11
Equity Investor	City Real Estate Advisors, Inc.
Credit Underwriting Approved	☒ Yes ☐ No Date: 12/28 /11 Investor underwriter indicates that they have completed underwriting and final committee approval will occur 12/28/11
Other Funding Sources Committed w/out Substantive Credit or Project Conditions	☒ Yes ☐ No City Council approved 12/14/11. PHB commitment letter dated: December , 2011.

Financing Structure:

Tax Exempt Bonds: Chase will purchase tax exempt bonds in two tranches, up to $7,657,706, to be issued by the State of Oregon through it Housing and Community Services Department (OHCS). Upon meeting the conditions required for permanent financing, the construction loan will convert to a permanent loan in an amount not to exceed $4,830,000. Twenty-four months after construction loan closing an amount of the construction loan equal to the permanent loan amount will convert to a fixed interest rate. The permanent loan will be interest only for up to six months prior to loan conversion. Conversion to the permanent period may occur at any point after 18 months and up to 30 months after construction loan closing. The applicable interest rate for the permanent loan shall be locked at construction loan closing. The current rate is estimated at 5.25%.

There will be two pay offs of the short term bond. The first will occur with equity payment #2, at the time of Certified Completion/TCO, in an amount of $1,850,000; and the second with equity payment #3 at permanent loan conversion, in an amount of $977,706.

Tax Credit Equity: The chart below summarizes the proposed funding of City Real Estate Advisors, Inc. equity contributions with funding conditions. At a per credit rate of .8750, the estimated equity is $4,797,777.

Equity Installment	Estimated Date	Amt Funded	Funding Conditions
1	Jan. 2012	$959,555	Admission/Bond Closing
2	April 2013	$2,158,999	Completion
3	Jan. 2014	$1,277,619	Stabilization
4	April 2014	$401,602	8609 Receipt
Total		$4,797,777	

Secondary Financing – Portland Housing Bureau: The Portland Housing Bureau ("PHB") will provide two Notes. Note 1 is for the acquisition loan of $565,000, and will be a Cash Flow Share Note, 0% interest during construction and 1% during permanent; and Note 2 is a $4,400,000 Cash Flow Share Note, 0% interest during construction and 1% during permanent. The term of the two notes is 40 years. Note 1 will begin cash flow sharing (50%) payments at the time of the (primary) permanent loan conversion. The estimated annual payment is $14,153. Note 2 (cash flow) payments will begin when Note 1 is paid off.

In addition, the developer has applied for, and PHB has recommended approval of a 3.104 limited tax exemption for the project. The project is expected to receive Planning Commission recommendation to city Council on November 29th. The City's Debt Manager has reviewed the abatement and has determined that it is not in conflict with any bond covenants.

Estimated Sources and Uses:

Sources	
Chase Permanent Loan	4,830,000
LIHTC (4%) Equity	4,797,777
PHB Housing Funding	4,400,000
PHB Land Loan	565,000
Deferred Developers Fee	285,963
Portland Railroad Reimbursement	160,000
Developer Cash	200
TOTAL FUNDING SOURCES	**$15,038,940**
Uses	
Acquisition	565,000
Construction	10,454,645
Development Costs	4,019,295
TOTAL USES	**$15,038,940**

Rent Gap Analysis:

- A tenant profile oriented towards singles and families was developed using 30% of allowable median incomes for Multnomah County to calculate maximum allowable 60% rents (the maximum for LIHTC rents).
- The Maximum LIHTC Net Rents are less utility allowances. Borrower is estimating utility allowances of $46 for studio units, $56 for one bedroom units, and $69 for 2 bedroom units.
- With respect to the subject, the tenants will pay for electricity, heat, telephone and cable television. Water, sewer, garbage service and hot water will be included with the tenants rent.
- The chart below shows the maximum LIHTC Program less utility allowances ("Max Rent at 60%) as compared to market rents ("Market Rents").

Unit Type	No. Units	% Median Income	Maximum Rent at 60% (LIHTC)	Developer's Restricted Rent	Market Rents (Market)	Difference Developer Rents & Mkt Rents	% Difference Dev Rents & Mkt Rents
Studio	6	60%	$710	$600	$750	($150)	20%
1 BD	48	60%	$754	$750	$900	($150)	17%
2 BD	26	60%	$903	$900	$1,050	($150)	14%
Total Units	80						

- Typically, in LIHTC transactions rents must provide a reasonable gap between restricted and market rents to ensure overall success and marketability.
- The chart above shows that the borrower's proposed rents, which are actually less than the LIHTC allowable rents, are between 14% and 20% below market rate rents. This more than exceeds the current underwriting guidelines of 10%.

Projected Annual Income & Expenses: *(First Full Year of Operation 2013-2014)*

Rental Income:	$756,000
Other Income:	$53,206
Potential Gross Income:	$809,206
Vacancy *(7%)*	$(56,644)
Effective Gross Income	$752,562
Annual Operating Expenses: *($4,404 p/u)*	$347,918
Net Operating Income	$404,644
Primary Debt Service: *$4,830,000 @ 5.40% 30 yrs*	$325,463
Annual Cash Flow	$79,181
Debt Service Coverage Ratio (DSCR)	1.243

- *Note: at the time of this writing (11-30-11), the tax exempt rate, as quoted from Chase, was 5.25%.*

Issuer Information:

Bond Series:	Housing Development Revenue Bonds 2012 Series A-1 & A-2
TEFRA Date:	December 13, 2011
Bond Fees:	1% aggregate bond amount: $76,577.06 2% on short term bond amount: $56,554.12
Bond Purchaser:	Chase Bank
Bond Closing Date:	January 23-26, 2012
Term of Bonds:	20.5 years / 30 year amortization *(2 yrs from close with 1 yr unfunded and 1 yr funded, interest only. When the perm bond is funded it replaces the "construction" bond so there still the same total amount outstanding. The 0.5 is for a potential extension to conversion to perm. 18 yrs principal and interest from conversion.)*
Bond Documents In Substantially Final Form	☒ Yes ☐ No Bond documents are estimated to be in substantially final form the week of December 26, 2011.

Department Risk/Mitigating Factors:

Meets Issuer's Guidelines for Bond Proceeds ☒ Yes ☐ No Date: December 13, 2011

- OHCS and the State of Oregon are protected from financial risk in a Pass-Through Revenue Bond Financing because the State does not credit enhance nor guarantee the bonds. The Department's bond documents reflect the pass-through of financial responsibility and bond liability to the lender, trustee and bondholder(s).
- Chase Bank has conservatively underwritten this transaction. The loan-to-value during construction is 68%, which is well below their maximum of 80%. At the time of permanent loan conversion, the loan-to-value is estimated to be 75%; again, below Chase's maximum 80%.
- The City of Portland, through its Portland Housing Bureau, has a substantial financial and public purpose commitment to see this project through completion.

I recommend approval of the Pass-Through Revenue Financing request as presented.

Shelly Cullin, Senior Loan Officer
Multifamily Housing Section

PAGE NUMBER CLARIFICATION

The page numbers referred to in the Memorandum found on page 19 of the Housing Council packet refer to the page numbers of the 2012 Qualified Allocation Plan and do not align with the packet page numbers. Please refer to the following list for ease of reference:

(Page 56, Exhibit C) = Page 79

(Page 37, Exhibit A) = Page 58

(Page 5, Public Notices) = Page 27

(Page 10, OHCS Basis Boost Policy) = Page 32

(Page 15, Existing LIHTC Properties and Over-Income Tenants) = Page 37

(Page 16, Priority for Federally Funded Projects) = Page 38

(Page 16, Eligible Applicants) = 38

(Page 17, Minimum Affordability Period) = Page 39

(Page 18, Sponsor Loans) = Page 39

(Page 18, Developer Fee) = Page 40

(Page 20, Site Reviews and Building Standards) = Page 42

(Page 25, Reserve Accounts) = Page 47

(Page 25, Tax Credit Pricing) = Page 47

QAP TABLE OF CONTENTS

The Table of Contents for the Qualified Allocation Plan is found on page 25 of the Housing Council packet. The corresponding packet page numbers have been inserted via interlineation for ease of reference.

Memorandum

To: Housing Council

From: Jodi Enos, Tax Credit Programs Representative

Date: December 28, 2011

Re: Draft 2012 Qualified Allocation Plan

Introduction

Oregon Housing and Community Services (OHCS) is the designated by the Governor as the administrating agency of the federal Low Income Housing Tax Credit (LIHTC) program. The Qualified Allocation Plan (QAP) governs the administration of the LIHTC program. Provided are the proposed changes in the administration of the LIHTC program as incorporated in the draft 2012 QAP.

The proposed policy changes are outlined below and also attached as Exhibit C of the draft QAP (page 56). These changes were originally approved by Finance Committee on August 23, 2011. The draft 2012 QAP was published for a public comment period from October 3, 2011 to November 4, 2011. A public hearing was held October 21, 2011. Public comments received are attached as Exhibit A of the QAP (page 37). Public comments were presented to Finance Committee and Department responses to such comments were approved and further reviewed the Policy, Strategy and Communication Division Administrator, Karen Tolvstad. If approved by this Council, the proposed QAP, as amended, will be sent to the Governor for signature. The Department wishes to publish the final 2012 QAP prior to the deadline for the 2012 Consolidated Funding Cycle (CFC) application, March 30, 2011.

Policy Changes for the 2012 Qualified Allocation Plan (QAP)

Existing Language / **Added Language** / ~~Removed Language~~

Public Notices - Page 5:

The Department may incorporate any changes for which the Department has issued adequate public notice.

OHCS Basis Boost Policy - Page 10:

~~c. Projects that address workforce housing needs, as per the Needs Analysis in the CFC~~

c. **Projects located in an area where workforce housing needs are identified in the OHCS Needs Analysis as a number one priority in the current or prior year's CFC application.**

~~The above not withstanding and given the current financial market conditions and testing for financial feasibility of each project, the Department will consider the issuance of the state's 130% basis boost, for projects outside of Qualified Census Tracts and Difficult to Develop Areas, as identified by HUD, and projects not characterized above. At its sole discretion, the~~

~~Department reserves the right to return to the above policy upon ample public notice, as soon as market conditions improve or within 12 months from the date this Plan becomes effective, whichever date is later.~~

<u>Existing LIHTC Properties and Over-Income Tenants - Page 15:</u>

Permanent relocation of households who qualified under the original credit allocation is not allowed for applicants requesting a subsequent allocation of credits for existing LIHTC projects still in their extended use period. The IRS has provided guidance that if the incomes of existing households (previously qualified under the original allocation) exceed income limits in place at the time subsequent credits are allocated, the households will remain protected third-party beneficiaries under the LIHTC program as stated in the 8823 Audit Guide. OHCS may not award subsequent tax credit allocations to existing LIHTC projects proposing permanent relocation of tenants above 60% AMI, but below 140% AMI.

<u>Priority for Federally Funded Projects - Page 16:</u>

- **Acquisition and rehabilitation of expiring use projects, especially those that include federal funding programs such as HOPE VI, Section 202, Section 811, RD or HUD project-based rental subsidy**

<u>Eligible Applicants - Page 16:</u>

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

Any entity legally doing business in the State of Oregon and not subject to debarment or other exclusion by OHCS or another state or federal agency may apply for a reservation of Low Income Housing Tax Credits as provided in OAR 813-050-0010. However, please refer to the applicable Department application under Sponsor Capacity to review expectations.

<u>Minimum Affordability Period - Page 17:</u>

There must be a legal commitment by the sponsor and proposed owner satisfactory to OHCS that the project will continually meet the applicable fraction, rent restrictions and such other project requirements for a minimum of years of affordability as determined by Housing Council.

<u>Sponsor Loans - Page 18:</u>

If any funding sources are being loaned by the general partner or managing member to the limited partnership or limited manager, the Department may require a legal opinion verifying to OHCS' satisfaction that such loans have specified terms of repayment, consistent with the expectation that the project can meet such cash flow needs. Further analysis and detail of the repayment assumptions may be required by the Department at any time.

<u>Developer Fee - Page 18:</u>

The calculation of developer fees as a percentage of project cost must net out the development fee and **project reserves** and other cash accounts from the total project cost. Specifically:

$$\frac{\text{Developer Fee}}{\text{(Total Development Cost – Developer Fee – }\textbf{All Project Reserves and Capitalized Cash Accounts}\text{)}}$$

The Department's Finance Committee will make the final determination of developer fee reasonableness. **However, if the requested changes fall within the limits established above, the Housing Division Administrator may recommend changes to the Director without Finance Committee review.**

Site Reviews and Building Standards - Page 20:

The Department requires all sponsors for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment that is satisfactory to the Department, unless an exception is provided in writing by OHCS.

The Department may perform inspections prior to, during and following a funding award by OHCS or an OHCS-approved third-party representative. The Department, based on such inspections or otherwise, may prevent a sponsor from advancing their application, terminate or revoke a reservation or allocation, or exercise other remedies, including, but not limited to, requiring changes to the application or project scope of work or budget.

The Department may verify if work has been performed to its satisfaction. The Department may require remediation of unsatisfactory work or conditions. The OHCS Architectural Standards and Building Enclosure Rehabilitation Guide can be found on the Department's website.

Reserve Accounts - Page 25:

The Department may require capitalized or cash account reserves (including, but not limited to, replacement reserves, operating reserves, transition reserves, liquidity reserves, guarantee reserves, etc.) to remain in the project through the entire affordability period and be used for their designated purpose or other purposes approved or negotiated by the Department. OHCS may require securitization or use rights with respect to such reserves as it deems appropriate. However, the Department will not unreasonably withhold funds for justifiable project expenses or uses.

Tax Credit Pricing - Page 25:

If there is an increase in LIHTC in pricing subsequent to a reservation tax credits due to a rapid inflation of equity markets, OHCS reserves the right to adjust the amount of a tax credit award or any other OHCS funding source. The Department may utilize the following distribution formula as a guideline for avoiding project over-subsidization:

- **Up to 50% percent of the increase in LIHTC equity due to pricing increase may be used for necessary, justifiable cost increases, approved by OHCS, or to reduce deferred developer fee. The remaining balance shall be used to reduce the permanent loan, sponsor loans, tax credit allocation or other OHCS funding sources as determined by the Department.**

Increases for specific, hard cost purposes, as required by the investor, may receive an exception to the above policy, pending Department approval of hard cost scope of work.

OHCS reserves the right to request additional information and otherwise to supplement its financial assessment at any time. Furthermore, the Department requires that it be immediately informed of the negotiated tax credit price at all times. OHCS also reserves the right to determine, in its sole discretion, whether the letters of interest or intent, award letters, or commitment letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment. A change in the

financing source or financing terms, among other things, after reservation of credits may, at the sole discretion of the Department, result in all or a part of the credits being recaptured, reduced or returned.

If accurate tax credit pricing information is not provided to the Department upon its request, or incomplete, misleading or false information is given, the Department may exercise any and all remedies provided in this QAP or available in law, including, but not limited to, rescission of any department resources awarded. Further, the Department may take such factors in determining whether or not to accept future applications or make subsequent LIHTC or other funding awards to applicants, or any member thereof.

<u>Requesting the approval from Housing Council of the final 2012 Qualified Allocation Plan as presented with recommendation to forward to the Governor for signature.</u>

What We Do Matters!

Oregon Housing and Community Services

2012 Qualified Allocation Plan

LOW INCOME HOUSING TAX CREDIT PROGRAM

Effective as of

725 Summer St NE Ste B, Salem, OR 97301-1271
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EQUAL HOUSING OPPORTUNITY

INSERT GOVERNOR APPROVAL HERE

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EXHIBITS

2012 QUALIFIED ALLOCATION PLAN EXHIBITS

2012 QUALIFIED ALLOCATION PLAN

For the Period Beginning with the Allocation of 2013 Low Income Housing Tax Credits

INTRODUCTION

The Low Income Housing Tax Credit (LIHTC) program was created under the Tax Reform Act of 1986.

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

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

The LIHTC program is a regulated and highly complex program. Final interpretations of certain rules and regulations governing various aspects of the program have not been issued by the IRS. As such, additional requirements or conditions applying to the tax credit program may be forthcoming. **It is strongly suggested that sponsors (as used herein includes project applicants and owners) interested in the LIHTC program contact their tax accountant or attorney prior to the development of projects under the LIHTC program. OHCS will strive to assist those applying for an allocation of LIHTC; however, the Department will not provide tax or legal advice.**

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

Amendments and Public Comment Requirements

Upon approval of the QAP, the Department may make minor and technical amendments to this QAP when changes are necessary to administer the LIHTC program to effectively serve Oregon's low-income housing needs, and to conform with amendments to IRC Section 42 and Department goals. Public notices to procedurally administer the LIHTC program will be issued for a minimum period of 30 days not to exceed a maximum period of six months. The Department may incorporate any changes for which the Department has issued adequate public notice.

OHCS is responsible for making the QAP available for review by interested members of the public before approval by the Governor. The Draft Qualified Allocation Plan is subject to a 30-day public comment period. Opportunities to review the Draft QAP are announced via posting to the OHCS website, mailing to interested parties upon request, Department stakeholder meeting(s) (public hearings), and announcement(s) published in a statewide newspaper or collection of newspapers. The Department accepts written comments either through letters or e-mail to qap@hcs.state.or.us or susan.bailey@hcs.state.or.us or through testimony at the scheduled public hearings. The public hearing for the Draft 2012 QAP was held on October 21, 2011 after appropriate notice was given as required by law. Comments gathered from such public meeting(s) were taken into consideration with the creation of this QAP and are attached as Exhibit A herein.

Pursuant to ORS 456.555(6)(a), the State Housing Council (the Council), with the advice of the Director of the Department, sets policy and approves or disapproves rules and standards for housing programs of the Department. The Council's Oregon Affordable Housing Policy Statement that outlines these principles is included as Exhibit B. The specific policy changes proposed in the Draft 2012 QAP are included as Exhibit C. The Council, together with the Department, has reviewed the QAP contained herein on [illegible] and has recommended it for the Governor's approval. The Honorable John A. Kitzhaber, MD, Governor of the State of Oregon, approved this QAP on [illegible], which shall become its effective date.

Documentation of Discretion

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

If any provision of this Qualified Allocation Plan (and documents included herein by reference) is inconsistent with the provisions of amended IRC Section 42, including any future amendments thereto, or any existing or new State Laws or State Administrative Rules governing the LIHTC program, the provisions of IRC Section 42, State Laws or State Administrative Rules take precedence over the QAP.

All Department policies other than those mandated by Section 42 are considered to be guidelines and may be waived. To be considered for an exception or waiver of applicable policies or criteria, the waiver or exception must be in writing and accompanied by justification satisfactory to the Department.

DISCLAIMER

Issuance of a Tax Credit Reservation (Reservation and Extended Use Agreement), Tax Credit Carryover Allocation (Carryover) or Placed In Service Allocation (IRS Form 8609) by the Department shall not constitute or be construed as a representation or warranty as to the feasibility or viability of the project, or the project's ongoing capacity for success, or any conclusions with respect to any matter of federal or state income tax law. All tax credit allocations are subject to the IRS regulations governing the tax credit program, and sponsors are responsible for the determination of the project's eligibility and compliance. If statements in this QAP are in conflict with the regulations set forth in Section 42 of the IRC or its amendments, the IRC regulations shall take precedence. While this QAP governs the Department's process of allocating LIHTC, sponsors may not rely upon this guide or the Department's interpretations of the IRC requirements relating to its legal effects.

No executive, employee or agent of OHCS, or of any other agency of the State of Oregon, or any official of the State of Oregon, including the Governor thereof, shall be personally liable concerning any matters arising out of, or in relation to, the allocation of LIHTC, or the approval or administration of this QAP.

QUALIFIED ALLOCATION PLAN OVERVIEW

Oregon's Low Income Housing Tax Credit Qualified Allocation Plan establishes the administrative process governing the allocation of federal housing tax credits to qualifying developments that address low income housing priorities throughout the state. The QAP covers the following topics:

- Requirements of the Qualified Allocation Plan
- Annual Allocation
- Program Elements

- Project Eligibility and Considerations
- Selection Criteria
- Application and Allocation Process
- Compliance

REQUIREMENTS OF THE QUALIFIED ALLOCATION PLAN

In accordance with Section 42(m), each state-allocating agency must include the following in the Qualified Allocation Plan:

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

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

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

ANNUAL ALLOCATION

Oregon's per capita credit authority, amount of returned credits, and state receipt of National Pool credits are allocated on a competitive basis, based upon project rankings determined during the Consolidated Funding Cycle (CFC) application period(s), Requests for Proposal (RFP) solicitations, or other special application processes established by the Department. All LIHTC allocations, including any increase in the allocations of a project's per capita credits, will be governed by this QAP.

Oregon is also provided with access to tax credits associated with Oregon's Private Activity Bond Authority. These credits are not subject to the per capita credit authority but are only available to projects that are financed using tax-exempt bond proceeds.

PROGRAM ELEMENTS

Credit Types

9% Credits: nine percent credits reflect approximately 70 percent of the qualified basis for new construction or substantial rehabilitation of qualified low-income buildings.

Competitive 4% Credits: four percent *competitive* credits reflect approximately 30 percent of the qualified basis of acquired buildings that are substantially rehabilitated, and are commonly used for federally funded developments such as United States Department of Agriculture Rural Development (RD) Section 515 program and United States Department of Urban Development (HUD) 811 and 202 program projects.

Both 9% and 4% competitive credits are subject to the per capita credit authority and are generally awarded annually under some type of scored application process as described and outlined in this QAP.

Non- Competitive 4% Credits: four percent *non-competitive* credits reflect approximately 30 percent of the qualified basis of newly constructed or acquired and substantially rehabilitated buildings financed with tax-exempt bond proceeds.

Credit Rate

Although the terms 9% and 4% are used, the percentage figures are approximate. The IRS sets the actual credit percentages on a monthly basis. Due to the Housing and Economic Recovery Act of 2008 (HERA), the 9% credit percentage rate is amended as follows per section 3002(a)(2): in the case of any new building which is placed in service by the taxpayer after July 30, 2008 and before December 31, 2013 that is not federally subsidized for the taxable year, the applicable percentage shall not be less than nine percent. No such provision has been made for the 4% credits and as such the rate continues to float on a monthly basis. All credits claimed on projects placed in service after December 31, 2013 will be subject to the applicable floating percentage at time of rate lock or placed in service.

Applicable Credit Percentage Rate Lock

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

- In general, the Applicable Rate is determined the month the project is placed in service.
- Rather than elect to lock the Applicable Rate based on the date the project is placed in service, the owner may elect to use the Applicable Rate determined the month the owner and the Department enter into a binding agreement to reserve the credit to each project. OHCS considers the fully and properly executed Reservation and Extended Use Agreement to be the binding agreement between the owner and OHCS.
- The Applicable Rate for projects receiving more than one year's allocation of credits will have the applicable rate set at the applicable rate established in the earliest binding agreement between the owner and OHCS. The Applicable Rate will be the same for each year of credit allocation.
- Owners of projects receiving an allocation of credits entirely from a different year(s) of credit ceiling than originally awarded to the project must enter into a new binding agreement if they chose to establish the applicable rate prior to the placed in service date.

If the building is financed with tax-exempt bond proceeds the owner may elect to use the Applicable Rate for the month in which the bonds are sold or during the months that the buildings are placed in service.

Eligible Basis

The cost of acquiring, rehabilitating, and constructing a building constitutes the building's *eligible basis.* The portion of the eligible basis attributable to low-income units is the building's qualified basis. In general, the qualified basis excludes the cost of land, obtaining permanent financing, rent reserves, syndication and marketing. The applicable percentage of the qualified basis may be claimed annually for 10 years as the Low Income Housing Tax Credit. The amount of LIHTC that may be awarded to a building is based upon the depreciable cost of the building and the portion of the project that low-income households will occupy and can be no more than needed to make the project financially feasible.

OHCS suggests that sponsors contact their legal or tax counsel in making project specific determinations as to the projection and calculation of eligible basis prior to application submission.

Housing and Economic Recovery Act of 2008

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

1. IRC Section 42(e)(3)(A)(ii) was amended and increases the rehabilitation expenditure requirements to equal the greater of an amount that is (1) at least 20% of the adjusted basis of the building being rehabbed; or (2) at least $6,000 per low-income unit (indexed for inflation) in the building being rehabbed, for any building placed in service during any calendar year after 2009. The provision is effective for buildings that receive credit allocations after July 30, 2008 and substantially tax-exempt bond financed buildings.
2. IRC Section 42(d)(4)(C)(ii) was amended and expands the size of the community facility with respect to the low income housing credit that may be claimed. The size of the community facility may not exceed the sum of :
    a. 25% of so much of the eligible basis of the qualified low income housing credit project of which it is a part as does not exceed $15,000,000; and
    b. 10% of any excess over $15,000,000 of the eligible basis, for all projects placed in service after July 30, 2008.
3. IRC Section 42(d)(5)(A) was clarified to identify that the basis reduction rule will apply to federally funded grants received before the compliance period. The provision also directs the modification of section 1.42-16(b) of the Treasury Regulations, for all buildings placed in service after July 30, 2008.
4. IRC Section 42(d)(2)(D)(iii) repeals the 10 percent attribution rule used to determine whether parties are related for purposes of determining whether an existing building qualifies for LIHTC.
5. IRC Section 42(d)(6) was amended to replace the first two exceptions to the ten year rule under the present law. One new exception was created that waives the ten year rule in the case of any federally or state-assisted building. For these purposes, the definition of federally-assisted building is expanded to include any building that is substantially assisted, financed or operated under various sections of the United States Housing Act of 1937, The National Housing Act, the Housing Act of 1949 or any other housing program administered by RD or HUD.
6. IRC Section 42(d)(5)(C) was amended by adding a third type of high cost area eligible for an enhanced credit (130% Basis Boost). This third type is defined as any building designated by OHCS as requiring the enhanced credit in order for such a building to be financially feasible. The following is the Department's policy on applying for the OHCS basis boost. These designations

are applicable to the competitive 9% credit only. Only eligible basis costs for new construction and rehabilitation can qualify for this basis increase. Acquisition costs are specifically excluded by IRC Code from the 130% bonus.

OHCS Basis Boost Policy

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

a. Preservation projects

b. Projects serving permanent supportive housing goals

c. Projects located in an area where workforce housing needs are identified in the OHCS Needs Analysis as a number one priority in the current or prior year's CFC application.

d. Projects that are 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.

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

Projects requesting a boost of their eligible basis that are not located in a HUD designated Difficult to Develop Area (DDA) or Qualified Census Tract (QCT) will need to submit to OHCS the following, but prior to Carryover:

(1) An explanation of how and why the use of the boost is needed for the specific project

(2) The most recent proforma, including sources, uses, income and expenses and explanations of proforma assumptions that identify the need for the additional basis boost to support the narrative

  (a) Substantial changes to the proforma from the original application, or from the latest available to OHCS, will not be accepted without valid explanations of the reasons that have led to the substantial changes

  (b) Changes in the project income and project expenses will not be accepted

  (c) The Department will not consider a request for the use of the OHCS basis boost to fill gaps resulting from increased costs in the uses of funding

PROJECT ELIGIBILITY AND CONSIDERATIONS

Minimum Set Asides

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

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

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

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

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

Residential Rental Property

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

- Residential rental properties must include separate and complete facilities for living, sleeping, eating, cooking and sanitation. Unlike the requirements for units financed with tax-exempt bonds, certain single room occupancy housing used on a non-transient basis may qualify for the credit even though such housing may provide eating, cooking and sanitation facilities on a shared basis.
- In addition to actual residential units, functionally related and subordinate facilities may be included in eligible basis if they are available to all tenants with no additional fees attached.
- A scattered site project may be treated as a single project if all units in all buildings are rent-restricted. This includes buildings that would (but for their lack of proximity) qualify as a project for the purposes of Section 42, are owned by the same party, have a management plan pre-approved by the Department and are financed under a common plan of financing. Also, the project must be considered a single project by all financing partners.
- If a building consists of both residential and non-residential areas, the non-residential portion will not preclude the residential portion from qualifying for credit. Determinations will be made on a reasonable basis to ensure that the costs for the commercial use portion of such a mixed-use building are not in the credit computation. As such, the Department will require full disclosure on the financing, ownership and management of the community spaces in addition to all requested information for residential units. Release of the IRS Form 8609 will be contingent upon successful leasing of the commercial space, a guarantee of commercial space rent, or a clear demonstration that the commercial financing is in all respects separate from the residential financing.
- Residential rental units must be available for use by the general public in a non-discriminatory manner. HUD provides definitions and authority regarding public use and non-discrimination.
- Project must maintain habitability standards
- If the project involves rehabilitation, there must be expenditures of at least $6,000 per unit or 20 percent of the unadjusted basis of the building, whichever is greater
- Operate under the program's rent and income restrictions for a minimum of 30 years pursuant to Reservation and Extended Use Agreements

Fair Housing

Regulations require that use by the general public be consistent with all applicable federal, state, and local law. Further, program requirements also include 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. The Department may exercise any remedy provided herein or otherwise available under law with respect to any violation of the LIHTC program, QAP or related law. Departmental remedies may include, but are not limited to, rejection of the LIHTC application, termination of processing, failure to issue an IRS Form 8609, or issuance of an IRS form 8823. The Department assumes no responsibility to inspect developments for compliance with required standards and laws.

HERA, as enacted July 30, 2008, allows LIHTC to be utilized for developments 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. Housing must be consistent with federal fair housing rules. The provision applies retroactively to projects already placed in service, as well as projects to be placed in service after July 30, 2008.

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 this 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. LIHTC 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 residential rental property:

- 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
- 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.

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

Native American Housing Assistance and Self-Determination Act

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

Historic Preservation

The Department encourages all project sponsors working with properties 50 years old or older to consult with the State Historic Preservation Office to determine the historic significance of the building. If the buildings are determined significant, the Department encourages preservation of the historic elements in the most efficient and effective manner possible. The State Historic Preservation Office can be reached at:

State Historic Preservation Office
725 Summer St. NE
Salem OR 97301
telephone: 503-378-4168 x231
fax: 503-378-6447

Unit Disbursement

It is the policy of the Department that all housing credit developments have affordable units disbursed throughout the development as well as throughout unit sizes. Projects meet the Department disbursement policy only if all following criteria are met:

- LIHTC eligible units are located in all buildings of a multi-building project
- There are LIHTC eligible units available in all unit types (i.e. the number of bedrooms or square footage) in projects that have a variety of unit types

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

Mixed Incomes

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

Property Management Units

The Department reserves the right to approve/disapprove any management units. The following criteria (not inclusive) may be considered in approving/disapproving units:

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

The owner must make a designation of the units as common spaces or as low-income residential units. All developments must notify OHCS of the status of the full time resident manager's unit and any other staff units on an ongoing basis. As long as the number of previously approved management units are not increased, the owner shall be permitted to move the management units within the project and within the same unit type as long as the change is reported on the owner's annual certification of compliance. OHCS requires sponsors to designate in the restrictive covenant documents any management units that will not be included in the applicable fraction.

Relocation / Displacement

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 include all of the following:

- A complete survey of existing tenants using the format provided by OHCS. This survey must include third party income verification and be completed and approved by the Department prior to the close of project financing.
- Indicate if overcrowding exists in any of the units
- Type of displacement that will occur (permanent or temporary) and if such relocation be achieved without displacement
- Process used to inform tenants of displacement or relocation
- Proposed relocation/displacement process. Indicate compensation and advance notice provided to those subject to displacement.
- Availability of comparable units in the community
- Source of funds for relocation expenses
- Describe any community policies regarding tenant displacement or relocation
- Describe how tenants with disabilities will be assisted regarding relocation or displacement
- Describe how the completed units will be affordable to income qualified tenants
- Provide monthly documentation on each resident to be relocated or displaced. This information should be included in monthly project reports to OHCS.
- Copies of all notices and documentation shall be forwarded to OHCS
- The relocation plan must be reviewed and approved by the Department

- For projects receiving federal funds, the Uniform Relocation Act (URA) may apply. URA requirements will supersede the above.

Existing LIHTC Projects

Projects previously awarded credits that are currently in their initial compliance or extended use period will not be eligible to apply for additional credits until the compliance or extended use period(s) are over unless the additional credits will provide a clearly demonstrable benefit to the tenants (beyond that promised in the original application). Projects with serious construction or construction material concerns may be eligible for additional credits within the restrictions of Section 42 and at the discretion of the Department.

Permanent relocation of households who qualified under the original credit allocation is not allowed for applicants requesting a subsequent allocation of credits for existing LIHTC projects still in their extended use period. The IRS has provided guidance that if the incomes of existing households (previously qualified under the original allocation) exceed income limits in place at the time subsequent credits are allocated, the households will remain protected third-party beneficiaries under the LIHTC program as stated in the 8823 Audit Guide. OHCS may not award subsequent tax credit allocations to existing LIHTC projects proposing permanent relocation of tenants above 60% AMI, but below 140% AMI.

SELECTION CRITERIA

The state established selection criteria to be used by the Department in its allocation of LIHTC covered by this document may include, but is not limited to:

- Encourage equitable allocation of credits across the state as outlined in the CFC application
- Encourage resident services and community involvement
- Provide an allocation of tax credits in an amount sufficient to make the project financially feasible and viable as a low-income housing project throughout the compliance period
- Context of affordable housing in the community, proximity to services and amenities appropriate to the tenant population, access to transportation, etc.
- Housing needs characteristics (as defined by a third party market analysis)
- Market considerations
- Affordability as compared to market rate (preference for projects with affordable rents that are at least 10% below market rents)
- The financial health of the sponsor organization (based upon annual audited financial statements)
- Project characteristics in relation to the population to be housed
- Encourage approaches in design, planning, building and financing of housing that maintains quality and long term sustainability, durability and ease of maintenance of affordable units
- Consistency with Department architectural and design guidelines, including the historic nature of the buildings
- Consistency with Department energy efficiency guidelines, as identified in the CFC
- Sponsor characteristics, capacity to carry out affordable housing development and compliance

- Past compliance record, past development record and quality of completed projects
- Proposed management agent record of performance
- Participation of local tax-exempt organizations
- Housing for families with children
- Provide a preference for projects located in a QCT, a designated state or federal empowerment/enterprise zone or Public Improvement District (PID) or other area where a local jurisdiction has, through a government initiative, encouraged or channeled growth, neighborhood preservation, community revitalization or redevelopment. Any of these activities must contribute to a concerted community development plan.
- Achievement of a jobs/housing balance, and housing near employment centers
- Achievement of community goals for livability
- Achievement of goals articulated in the state or local consolidated plan
- Tenant populations with special housing needs
- Public housing waiting lists

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

- Mixed income projects where appropriate
- Mixed use projects where appropriate
- Acquisition and rehabilitation of expiring use projects, especially those that include federal funding programs such as HOPE VI, Section 202, Section 811, RD or HUD project-based rental subsidy
- Other criteria deemed appropriate by the Department as indentified in the application materials

Each of these foregoing criteria may be evaluated in the context of a given proposal and the feasibility of that proposal to fulfill each item.

Eligible Applicants

Any entity legally doing business in the State of Oregon and not subject to debarment or other exclusion by OHCS or another state or federal agency may apply for a reservation of Low Income Housing Tax Credits as provided in OAR 813-050-0010. However, please refer to the applicable Department application under Sponsor Capacity to review expectations.

Material Participation by Nonprofit Organizations

For applicants that involve a general partner, co-general partner or co-managing member or other shared ownership or management by a local tax-exempt nonprofit organization, the Department requires material participation by the said local tax-exempt nonprofit organization to include each of the following, but not be limited to:

- Participation in developer fees and excess cash flows. More favorable consideration will be given to projects where nonprofit participation in developer fees and excess cash flow is at least 25 percent. Excess cash flow, as used in the QAP, means proceeds remaining after appropriate operating expense obligations are met.

- Participation in project oversight and decision making, such as direct involvement in application preparation, direct involvement in discussions for construction, bridge and debt financing, a close working relationship with the property management firm and tenant selection. The project must demonstrate an ability to further the nonprofit's charitable mission and there should be an ability on the part of the nonprofit to override any obligation to the owners when that obligation conflicts with the charitable mission of the nonprofit.
- Provision of assistance that empowers the nonprofit and enables it to gain expertise.
- It is further required that the nonprofit not be affiliated with or controlled by a for-profit person or entity.

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

Long-Term Affordability

There must be a legal commitment by the sponsor and proposed owner satisfactory to OHCS that the project will continually meet the applicable fraction, rent restrictions and such other project requirements for a minimum of years of affordability as determined by Housing Council. Projects with tax-exempt bond financing must commit to an extended use term of 30 years or the outstanding term of the bonds, whichever is greater. Both competitive and non-competitive tax credit project owners must record in appropriate county records a Restrictive Covenant satisfactory to the Department waiving the right to petition the Department to terminate or reduce the extended use term as described in IRC Section 42(h)(6). Additional favorable consideration will be given where sponsors agree to an extended use period beyond the minimum required.

Financial Feasibility

Basic financial feasibility project consideration criteria will be considered by the Department. Financial underwriting criteria can be found in the appropriate Department application materials and are based on industry or programmatic standards. Sponsors should pay special attention to application guidelines regarding the following financial considerations:

- Debt service coverage ratio
- Loan-to-value ratio to maximize debt and minimize the use of the competitive tax credit
- Construction costs per square foot
- Developer fees in accordance with Department policy
- Reasonable operating expenses
- Replacement reserves
- Operating reserves
- Itemized operating expenses and vacancy rate projections must be provided and supported by reasonable and credible evidence

If any funding sources are being loaned by the general partner or managing member to the limited partnership or limited manager, the Department may require a legal opinion verifying to OHCS' satisfaction that such loans have specified terms of repayment, consistent with the expectation that the project can meet such cash flow needs. Further analysis and detail of the repayment assumptions may be required by the Department at any time.

Developer Fee Policy

The Department acknowledges sponsors' need to include fees that support sound business practices and develop appropriate operational capacity. The developer fees may include other "soft" costs that reasonably, in the Department's determination, are required to develop the project (i.e. development consultant fees, project management fee, developer overhead and profit, etc. and any developer fees chosen to be deferred). The Department has established a maximum developer fee of 15% on all projects. However, the reasonableness of fees will be evaluated and subject to approval by OHCS, based on relevant factors including, but not limited to, the risk and complexity of the proposed development.

Applications that include limited or no cash development fees may be financially infeasible. The Department recognizes the need for a project's viability to take into consideration cash development fees to cover unforeseen contingencies and the project's need to meet underwriting criteria. The Department realizes that circumstances, often beyond the control of the sponsor, may change the amount of the cash or deferred developer fees. Finally, project sponsor may be able to adjust deferred or cash development fees depending on the sponsor's ability to develop a project within budget and the anticipated development period.

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

A general framework adopted by the Department to determine developer fee reasonableness is included in the appropriate Department applications or any additional program materials adopted or used by the Department.

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

$$\frac{\text{Developer Fee}}{\text{(Total Development Cost – Developer Fee – All Project Reserves and Capitalized Cash Accounts)}}$$

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

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

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

Requesting Increases to Total Developer Fee

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

Requesting Changes Between Cash and Deferred Developer Fee

A material difference in the amount of deferred and cash development fees represented at Final Application (IRS Form 8609 allocation) or cost certification versus original application may be considered a misrepresentation of the original project application if the Department is not provided with a satisfactory explanation, in its judgment, for the difference. The Department realizes project cost changes occur during the development process. As such, the Department will consider a deviation of the lesser of 25% of the original deferred fee or $200,000 from the deferred or cash development fees represented in the original application to the Department to be de minimus and thus acceptable without Departmental approval. Changes in the deferred or cash development fees beyond the lesser of 25% or $200,000 must be presented to the Department for approval 30 days prior to Final Application(s) or cost certification(s).

The Department's Finance Committee will make the final determination of developer fee reasonableness. However, if the requested changes fall within the limits established above, the Housing Division Administrator may recommend changes to the Director without Finance Committee review.

Market Analysis

IRC Section 42 requires a comprehensive market analysis for each Low Income Housing Tax Credit project. The market analysis must be conducted by one of OHCS' approved market analysts and be no more than six months old prior to application. The market analyst shall be a disinterested party to the project. Sponsors can download the list of approved market analysts at: http://www.ohcs.oregon.gov/OHCS/HRS_LIHTC_Program.shtml#Market_Analysts or can contact the Department to obtain the list.

The analysts must conduct the market analysis in such a manner as to address the items described in the applicable Department application. The market analysis may be included in an appraisal as long as the appraiser has followed the instructions provided by the Department (refer to instructions to appraiser) and is prepared by a Department approved market analyst. The Department, at its sole discretion, may request additional market information from the sponsor and additional comment from the local government before reserving tax credits and may decline to reserve credits if the proposed project has a potential to disrupt the local housing market. The market analysis will be a factor of OHCS' review of applications for projects requesting LIHTC credits.

The Department may reject an application, revoke the credit reservation, or exercise such other remedy as it deems appropriate, if it determines, in its sole discretion, that market demand and conditions do not justify the project as proposed.

Rehabilitation Requirements / Replacement Reserve

The Department requires all sponsors for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment that is satisfactory to the Department, unless an exception is provided in writing by OHCS.

The Department may perform inspections prior to, during and following a funding award by OHCS or an OHCS-approved third-party representative. The Department, based on such inspections or otherwise, may prevent a sponsor from advancing their application, terminate or revoke a reservation or allocation, or exercise other remedies, including, but not limited to, requiring changes to the application or project scope of work or budget.

The Department may verify if work has been performed to its satisfaction. The Department may require remediation of unsatisfactory work or conditions. The OHCS Architectural Standards and Building Enclosure Rehabilitation Guide can be found on the Department's website.

Resident Services

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

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

Sponsors are encouraged to build services provisions into their operating expenses.

Resident services are not intended to be limited to services provided on site, to residents at risk or with special needs, nor does it make participation in services mandatory for residents. It is intended to be a support system integrated into the housing and available to all residents, except where other funding sources require it.

The required resident services plan can be found at http://www.ohcs.oregon.gov/OHCS/APMD/docs/ManagementAgentPacket.doc as described in the Department application materials and attached as Exhibit D of this document.

APPLICATION AND ALLOCATION PROCESS

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

To apply for LIHTC, the applicant must submit a detailed proposal to the Department on the form prescribed, during the specified application periods within the Department's CFC application, or as announced by RFP or other special application process as prescribed by the Department. For projects financed with tax-exempt bonds, applications can be received at any time.

The specifics of the application contents are available through the Department at (503) 986-2000 or at http://www.ohcs.oregon.gov/OHCS/HRS_CFCApp.shtml.

All LIHTC applicants are required to complete and submit the Department's environmental review form. This form can be found in the application materials. Further, applicants should consult 24 CFR, part 35 for additional specific information regarding lead-based paint requirements, or contact OHCS LIHTC program representative.

Applications received through the CFC for either 9% credits or competitive 4% credits must meet the Department's threshold requirements or the application will be removed from further review.

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

Applications under the CFC, RFP or other special application process established by the Department, will be reviewed and ranked according to a competitive evaluation and projects will be selected to receive conditional offers to reserve tax credits. Upon issuing a conditional reservation, the Department will notify the Chief Executive of the designated jurisdiction where the planned housing development is located.

The Department application and selection process is created in accordance with the requirements of IRC Section 42. In evaluating projects, the Department will consider factors, including, but not limited to, proceeds or receipts expected to be generated through tax benefits, as well as the reasonableness of development hard and soft costs. In general, the IRS expects the Department to compare the proposed project's development costs with the non tax credit financing, both private and public. The difference between the costs and sources to finance the project is the financing gap. Tax credits may be used, subject to allocation requirements of the QAP, to attract the equity investment to fill this gap.

The following program considerations will be evaluated in the application:

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

Consideration will also be given to projects that propose the following:

- Include energy efficient features
- Rehabilitates and helps preserve a certified historic structure

Further, the Department has designated the following project set asides:

- Ten percent (10%) federally mandated nonprofit set aside
- Twenty-five percent (25%) Department preservation projects set aside
- Fifteen percent (15%) RD set aside (see RD/OHCS Memorandum of Understanding attached as Exhibit E.)

Additionally, applicants competing for 9% and competitive 4% credits will complete a Self-Scored Section. The Self-Scored Section will give an opportunity for the applicant to earn points for readiness-to-proceed criteria and Department preferences, including:

- Renting units to households with net incomes less than two times the amount of the rent
- The specific population(s) to be served
- Green building measures incorporated in project
- Identification of construction or rehabilitation costs
- Support from federal, state or local governmental offices and the community
- Commitment of non-OHCS resources

The evaluation criteria are considerations the Department makes for each LIHTC proposal. Because every project is unique, each application is considered in the context of the given proposal.

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

Those projects receiving a conditional offer to reserve tax credits must comply with all conditions outlined in the Offer Letter within 75 days in order to receive a tax credit commitment. Credit reservations offered to, but not accepted by the applicant may become available for distribution to other high-ranking applicant(s). Following the offer to reserve credits, an extension beyond the initial 75-day period may be considered should the Department determine there are circumstances to warrant this consideration.

Unused Credit Authority

When tax credits are not awarded or are returned, the Department, at its sole discretion, may do any of the following:

1. If needed and available, fill project gaps for awarded projects that have not met Carryover.
2. Fund the next highest-scoring CFC project from the current round that matches or is closest to the amount of LIHTC and other department resources available. The prospective applicant will be given no more than 30 days to evaluate its own financial position and determine if the organization has the capacity to proceed with LIHTC or other resources, if available. The Department will require that a selected project have a reasonable timeline to proceed to completion. The project sponsor will be subject to timeframes outlined in this QAP as well as timeframes of award (i.e. the 75-day Reservation Letter conditions). This may include, but is not limited to Carryover application requirements. The Department will maintain scoring rankings for projects and utilize such an order accordingly until all LIHTC resources for that year have been exhausted or until October 1st of each year (whichever is later).
3. To the best of its ability, the Department will maintain the Department desired funding split between rural and urban funded projects.
4. The Department may issue RFP's or other special application processes for projects to compete for the remaining tax credits.

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

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

If a funded project cannot meet Carryover, or becomes ineligible for the credits for any other reason, the next available project on the list will be notified. Other Department funding sources for waitlisted projects may also be reserved based upon their availability.

Project Denial

The Department may reject or discount an application from previous program participants who have:

1. Failed to complete projects in accordance with applications or certified plans presented to the Department or other public or private allocating agencies
2. Failed to complete a project within the time schedule or budget indicated in the application
3. Failed to effectively utilize previously allocated tax credits
4. Been found to be in chronic non-compliance with program rules as evidenced by Department or other public or private allocating agency project monitoring

The Department reserves the right to disapprove any application for tax credits if, in its judgment, the proposed project is not consistent with the goals of providing decent, safe and sanitary housing for low-income persons as set forth in the Department's enabling legislation or the project does not meet the requirements of IRC Section 42 as amended, all regulations promulgated hereunder, or polices and preferences stated in the QAP. The Department may impose additional conditions on project sponsors for any project as part of the credit reservation process.

Public Records Disclosure Policy

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

- Personal and corporate financial statements and information, including tax returns
- Credit reports
- Project appraisals
- Market analyses
- Articles of incorporation, partnership agreements and operating agreements
- Commitment letters
- Project pro formas and budgets
- Project cost certifications and cost data
- Audits
- Project tenant correspondence requested to be confidential
- Tenant files relating to certification
- Housing assistance payment requests

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

Project Evaluation for Appropriate Credit Amount

Project evaluations will be conducted to determine the appropriate amount of tax credits for which the project is eligible. As mandated by IRC Section 42, a project evaluation will be made for each complete application received by the Department. Further evaluations will be conducted for tax credit reservation recipients as they proceed through the allocation process to confirm eligibility and the need for the credit allocation, as follows:

- Upon receipt of tax credit application
- Prior to providing a Tax Credit Carryover Allocation (for competitive, per capita credit requests)
- No earlier than 30 days prior to issuance of IRS Form 8609

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

1. Total project costs
2. Funding sources available to the project including:
   a) Loans
   b) Grants
   c) Tax Credit Proceeds - The Department will use current market guidelines, as well as applicant representations, to estimate proceeds anticipated from the sale of tax credits. A copy of the placement memorandum or syndication agreement must be provided to the Department no later than the date upon which the sponsor applies for IRS Form 8609 allocation. If said document has not been finalized, a draft placement memorandum or syndication agreement or limited partnership agreement is acceptable.
   d) When actual tax credit proceeds are determined, there may be an adjustment to the credit reserved or committed. Credit will not be increased beyond the amount originally reserved unless application amendments are submitted and the request meets the requirements on applications by sponsors who request additional tax credits after initial award. In the case of non-competitive credits, the request is reviewed and approved by the Department Finance Committee or administrative approval, depending on the amount of credits requested. If actual project costs or funding sources differ substantially from the projections submitted in the application, the Department may reduce the final credit allocation or the owner may establish project reserves to offset the deficit for allowable purposes. The conditions for such reserve accounts will be determined on a case-by-case basis, and must be approved by the Department.
   e) Owner Equity - Owner equity is often in the form of deferred developer fees. Developer fees may not exceed 15 percent of total project cost per the developer fee policy described herein. The Department requires full disclosure of all fees paid to parties related to the sponsor. The developer fee shall include developer overhead, profit, and consultant fees for services normally performed by the developer.

3. Percentage of the housing credit dollar amount used for hard costs (actual construction costs, including builder and contractor's fees)
4. Projected operating income and expense, 30-year cash flow and tax benefits
5. Maximum tax credit eligibility - Additional eligible basis will be considered for projects located in a HUD designated DDA or QCT if deemed necessary for the viability of a project by the Department
6. Debt service coverage ratio
7. Project reserves - four to six months operating reserves at a minimum. Reserves less than or in extreme excess of this will be approved on a case-by-case basis. Considerations will be made for lender and equity investor requirements.

The Department may require capitalized or cash account reserves (including, but not limited to, replacement reserves, operating reserves, transition reserves, liquidity reserves, guarantee reserves, etc.) to remain in the project through the entire affordability period and be used for their designated purpose or other purposes approved or negotiated by the Department. OHCS may require securitization or use rights with respect to such reserves as it deems appropriate. However, the Department will not unreasonably withhold funds for justifiable project expenses or uses.

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

If there is an increase in LIHTC in pricing subsequent to a reservation tax credits due to a rapid inflation of equity markets, OHCS reserves the right to adjust the amount of a tax credit award or any other OHCS funding source. The Department may utilize the following distribution formula as a guideline for avoiding project over-subsidization:

- Up to 50% percent of the increase in LIHTC equity due to pricing increase may be used for necessary, justifiable cost increases, approved by OHCS, or to reduce deferred developer fee. The remaining balance shall be used to reduce the permanent loan, sponsor loans, tax credit allocation or other OHCS funding sources as determined by the Department.

Increases for specific, hard cost purposes, as required by the investor, may receive an exception to the above policy, pending Department approval of hard cost scope of work.

OHCS reserves the right to request additional information and otherwise to supplement its financial assessment at any time. Furthermore, the Department requires that it be immediately informed of the negotiated tax credit price at all times. OHCS also reserves the right to determine, in its sole discretion, whether the letters of interest or intent, award letters, or commitment letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment. A change in the financing source or financing terms, among other things, after reservation of credits may, at the sole discretion of the Department, result in all or a part of the credits being recaptured, reduced or returned.

If accurate tax credit pricing information is not provided to the Department upon its request, or incomplete, misleading or false information is given, the Department may exercise any and all remedies provided in this QAP or available in law, including, but not limited to, rescission of any department resources awarded. Further, the Department may take such factors in determining whether or not to accept future applications or make subsequent LIHTC or other funding awards to applicants, or any member thereof.

Revocation or Reduction of Housing Credit

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

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

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

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

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

Award and Reservation of Credits

Documentation requirements for reservation of tax credits shall include:

1) Receipt of all applicable application items
2) All documentation required to evidence compliance with the Reservation and Extended Use Agreement conditions
3) Reservation Letter will be sent to the applicant of the conditions of funding required by the Department. A signed and returned copy as an acknowledgement of such conditions shall be returned to the Department.

4) Reservation and Extended Use and Hold Harmless Agreements

5) Tax credit reservation fees paid in a timely matter

6) Monthly progress reports

7) An approved Carryover Application and Agreement for projects receiving competitive credits that will not be placed in service in the allocation year

8) A completed and approved Final Application and executed Declaration of Land Use Restrictive Covenants will be required prior to the release of the IRS Form 8609 by the Department

Reservation Period for Competitive 9% Credits

Project sponsors who receive a reservation will have a maximum timeframe (as identified and outlined in the current CFC process, currently the 75-day reservation period) to submit additional materials and fulfill specific project milestones that address readiness to proceed issues. If the sponsor does not satisfactorily complete the requirements of the Reservation Letter within the deadline identified in the timeframe outlined in the CFC process, the project will be subject to review and may have the reserved funds and tax credits rescinded. OHCS will reallocate LIHTC in accordance with its Unused Credit Authority policy and described herein.

The Department will require each applicant that has received a LIHTC reservation to demonstrate that the project is making satisfactory progress towards completion through monthly progress reports. The progress reports are required to report on critical events and timelines such as site acquisition, meeting or failing to meet the 10% test, loan closings, groundbreaking, construction start, construction completion, etc. Each report must describe the sponsor'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.

Exchanging a 9% Credit Award for a Subsequent Year's Credit Allocation

Once an applicant has received an allocation of credits during an annual award cycle, the sponsor has the responsibility to complete the project by the timelines identified in the IRC Section 42 and as outlined in this QAP.

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

Applicants must determine good cause to return their reservation to the Department, and as such the sponsor has a one-time option to return their allocation to OHCS, as follows:

1. No later than March 31 of the year following the allocation of credits, a sponsor may request to return their allocation for the exact same project for which the credit was originally allocated at Carryover and exchange it for an award of the same amount of credits from the next credit year as the amount returned. For example, a 2013 awarded project that completed Carryover may choose to return its award once Carryover is complete and receive an award of 2014 tax credits of the exact same amount as allocated in 2013, if the project has and will not be placed in service by December 31, 2013.
2. After credits have been returned, sponsors may apply for additional tax credits in accordance with this QAP.

3. Projects must comply with the requirements in the QAP 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 an exchange request of credit reservation years.

Requesting Additional Tax Credits after an Initial Award

Once the reservation period ends, the Department will not accept requests to fill financing gaps resulting from increases in construction costs, except as follows:

Sponsors who receive an initial reservation of annual per capita LIHTC, as a result of competing in the CFC process, may generally make one request for additional tax credits, if the project has experienced an unforeseen hardship since the time of the application and if eligible basis exists to allow the credits to be issued.

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

A project awarded LIHTC that has completed a Tax Credit Carryover Allocation for all of the credits it was awarded must compete for a reservation of additional tax credits.

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

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

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

The yield in the original partnership agreement is the yield that will be used to determine credits at Final Application.

The application for additional credits must include the following:

1. Written confirmation from the direct investor or tax credit syndicator of their level of interest in the project, including their timelines and the terms and conditions of the equity investment

2. A letter of interest from the construction lender that outlines construction financing has been identified and the project will be ready to proceed according to the timelines identified in the project's application for original award

3. A letter of interest from a permanent lender that outlines permanent financing is in process

4. Indication that the project will proceed substantially as outlined in the original application and there will be no substantive changes to project's scope or scale, rent structure, architectural specifications, or any other permanent aspect of the project

The Department, at its sole discretion, may consult directly with equity investors and lenders to carry out the above policy.

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

Projects previously awarded credits that are currently in their initial compliance periods for pre-1990 projects and in their extended use period for post-1990 projects, will not be eligible to apply for additional credits until the extended use period is over unless the additional credits will provide a clearly demonstrable benefit to the tenants. Existing LIHTC projects are not eligible to receive additional acquisition credits until the end of the initial owner's 15-year compliance period.

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

Projects that do not compete for their allocation of credits (4% credits) and need additional credits to remain financially feasible will be subject to the requirements of this QAP. Additional credits may be awarded if, in the analysis and underwriting process at Final Application, it is determined that the project requires additional credits to be financially feasible. All charges associated with additional resources, as outlined in Exhibit F, will be applicable for additional credit awards.

Voluntary Return of Credits

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

Annual per capita credits returned after January 1 and prior to October 1 of any given year will be reallocated as outlined in this QAP.

Split Year Tax Credit Allocations

Projects that request additional credits, and receive those credits from the subsequent credit year authority, shall comply with the policies and procedures in the QAP in effect at the time of the original credit award for their project. For example, if a project receives an award of 2013 tax credits of $400,000 and is awarded another $300,000 in 2014 tax credits, the entire project allocation of $700,000 credits must comply with the QAP in effect for the 2013 tax credits.

Allocation by Tax Credit Year

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

Competitive Allocation Limitations

During the development process, the following limitations shall apply:

- The per capita tax credit cap for projects applying for a reservation of credits will be no more than 10% of the total per capita award from the previous year's allocation (the application cap).
- The Department, at its sole discretion, may approve the issuance of additional credits above the application cap if a project needs additional credits above the application cap to be financially feasible, but no project may be allocated additional credits in excess of 25% of the application credit cap per project,. For example, the application cap for the 2012 credit year was $820,000 in credits. If projects need additional credits once a reservation is issued, and resources are available, the Department, at its sole discretion, may award additional credits up to $205,000 of additional credits per project, not to exceed $1,025,000 per project.
- The per capita maximum is waived for projects accessing 4% credits outside of the competitive process for use with tax-exempt bond financing.
- Tax credit offers of reservation or Carryover may not be transferred without Department approval.
- For projects with a nonprofit sponsor applying for the 10% nonprofit set aside, the nonprofit sponsor must materially participate in the development of the project. Any changes in general partner status without the consent of the Department may result in forfeiture of the reservation offer or Tax Credit Carryover Allocation.
- The Department will diligently enforce all agreements, warranties and representations of the sponsor regarding the project, especially those made in the initial application as well as those made in the Reservation and Extended Use Agreement. Failure to perform or demonstrate progress may jeopardize reservation, Carryover, tax credits previously awarded and potential future allocations.
- Tax credit reservations are made based upon representations in the application. Once a Reservation and Extended Use Agreement has been offered or executed, written approval for any changes to the project must be obtained from the Department. This approval shall be made in a timely manner and will not be unreasonably withheld. Changes requiring such approval include but are not limited to:
    a. Changes in the project's composition may be approved provided the project continues to maintain an evaluation ranking equal to or greater than those awarded to the original project. A re-evaluation of the project is necessary if there are material changes to the project scope. Sponsors will be required to submit an amended application, and an additional application fee may be required.
    b. Composition of the partnership
    c. Lender/equity investor changes
    d. Changes in the unit mix or number of units

e. Changes in cost
f. Changes in management agent
g. Changes in tax credit yield (price per credit)
h. Other changes the Department, at its discretion, deems substantive

Reservation and Extended Use Agreement (Extended Use Period)

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

The Reservation and Extended Use Agreement will lock the Applicable Rate and must be fully executed subject to conditions of the offer letter for a competitive credit project or in the month in which the bonds are sold for a tax-exempt financed project. Failure to lock the rate at either of these points in time will postpone the rate lock to the date that the project is placed in service.

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

Carryover Application for Competitive Credits

On or before December 1 (or the next business day) of the tax credit year, tax credit recipients must submit either an application for Tax Credit Carryover Allocation (if the project is still in the construction process), or a Final Application indicating placed in service (Certificates of Occupancy/Completion have been received and the project is ready for occupancy by tenants).

A complete hard copy of the Carryover Application must be received by the Department by December 1 of the credit year or the Department may assess a late charge. The Carryover Application can be found at http://www.ohcs.oregon.gov/OHCS/HRS_LIHTC_Program.shtml. The Department will have the right to charge an hourly rate for applications that need additional review due to subsequent submissions or changes to the original application that would require additional reviews of the application.

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

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

Applicants requesting 4% credits in association with tax-exempt bonds do not need to meet Carryover requirements.

Application for Tax Credit Allocation (Placed In Service Projects)

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

The Final Application must be submitted to the Department within six months of the last building receiving their certificate of occupancy or, in the case of acquisition/rehabilitation, six months after the project is determined to be substantially complete. Projects submitting their Final Applications after six months may be assessed a late charge and an additional review charge if more information is required to complete the review. Sponsors must pay the required Department charges as set forth in the application at each stage of the application process. In determining whether or not to charge an additional review charge, and the amount thereof, the Department may consider factors including, but not limited to, the following: (a) the Department's actual or projected costs in reviewing an application for tax credits and the project related thereto; (b) the extent of underwriting scrutiny performed or deemed necessary by the Department; (c) the amount and nature of staff resources utilized or projected for researching or reviewing a proposal or application; and (d) the amount and nature of outside resources utilized or projected for researching or reviewing a proposal.

See http://www.ohcs.oregon.gov/OHCS/HRS_LIHTC_Program.shtml for specific Final Application submission requirements, or contact the OHCS LIHTC representative.

Tax credits are considered awarded to a project at the time the Department issues a 9% Carryover Agreement or IRS Form 8609. (Four percent credit projects do not need to complete Carryover requirements.) Owners must place the project in service no later than December 31 of the credit year (for 9% competitive projects), unless a Tax Credit Carryover Allocation is obtained. If a Tax Credit Carryover Allocation is obtained, the project must be placed in service no later than December 31 of the second year following the original allocation. Investors can claim the credits for each year of a ten-year period (called the "credit period") as long as the project is operating in accordance with the representations made to the Department in its application for credits and in accordance with IRS regulations. Individual and corporate investors must mail the original completed IRS Form 8609 (issued by the Department) the, "Low Income Housing Credit Allocation Certification" for the first year they claim the credits to:

Internal Revenue Service
PO Box 331
Attn: LIHC Unit
DP 607 South Philadelphia Campus
Bensalem, PA 19020

A copy of the completed IRS Form 8609 should be returned to:

Oregon Housing and Community Services
Attn: Program Analysis and Enforcement Section (PA&E Section)
725 NE Summer Street, Suite B
Salem, OR 97301

Once a project has been placed in service, the Department is responsible for monitoring the project for compliance with state and federal requirements concerning household income, rents, project habitability, resident services and other requirements as represented in the application, Declaration of Land Use Restrictive Covenants and other agreements.

Subsidy Layering Review

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

Identity of Interest

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

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

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

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

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

Non-Competitive Credits Issued in Conjunction with Tax-Exempt Financing (Bonds)

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

Applications for non-competitive tax-exempt bond financed credits will be evaluated based upon criteria similar to the CFC criteria. While sponsors will not be competitively scored, there will be an expectation that projects meet basic standards of eligibility and community appropriateness. Non-competitive applicants may resubmit application materials with corrections. All tax-exempt bond financed projects requesting an allocation of LIHTC must adhere to the selection criteria as stated in both the QAP and the LIHTC application materials. Subsection (h)(4) of Section 42 pertaining to projects utilizing tax-exempt financing shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the QAP and application materials applicable to the area in which the project is located.

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

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

- Provide a copy of the appropriate bond program pre-application, 4% application or other proposal materials submitted for review to the tax-exempt bond issuer. Incomplete applications will not be accepted. The Department reserves the right to provide comment to the bond issuer regarding the use of LIHTC in conjunction with tax-exempt bonds. These comments will be restricted to eligibility for LIHTC based upon criteria outlined in the QAP.
- An application charge as outlined in the CFC, RFP, or other special application process established by the Department, including non-competitive 4% tax credit applications must accompany the initial application.
- Complete applications with adequate materials for evaluation will be heard by the Department Finance Committee for recommendation to the Director.
- Upon receipt of Finance Committee recommendation and Department Director approval, an offer to reserve tax credits will be made. The sponsor must acknowledge acceptance of such offer within thirty days of its receipt.
- Execution of Reservation and Extended Use Agreement will establish the parameters of the LIHTC award regarding rent and income restrictions for the project. The reservation charge must accompany execution of this agreement.
- Ongoing project monitoring and progress reports are due during the construction and lease up phases of the development
- Final Application/IRS Form 8609: non-competitive tax credit Final Applications shall follow the process as outlined in this QAP and found at http://www.ohcs.oregon.gov/OHCS/HD/HRS/LIHTC/FinalApplication.doc.

Applicants who have received non-competitive credit reservations may request additional credits if there is a justifiable increase in project costs directly related to the project's eligible basis. If the

Department approves additional credit requests, developer fees will be held to the same dollar amount as reflected in the initial application.

IRS Form 8609 is released after an executed Declaration of Land Use Restrictive Covenants is recorded against the property.

COMPLIANCE

As the allocating agency for the State of Oregon, OHCS is responsible for compliance monitoring of all LIHTC projects for adherence to Section 42 as well as conditions stated in the project application. The Department is responsible for establishing compliance monitoring procedures and must report incidences of noncompliance to the IRS. Monitoring each project is an ongoing activity that extends throughout the extended use period (a minimum of 30 years). Projects with funding sources obtained from the Department in addition to the credit will be monitored for the most restrictive requirements of all combined programs. Owners must be aware of the differences in program regulations. The OHCS Compliance Manual is incorporated via reference as Exhibit G of this document. Additional compliance and monitoring information can be found at: http://www.ohcs.oregon.gov/OHCS/HPM_LIHTC_Compliance_Manual.shtml.

IRS Audit Guide Policy

The IRS has adopted a Final Audit Guide. The 8823 Guide is the document used by the IRS to offer technical support for identifying and developing issues related to IRC Section 42. The 8823 Guide consists of chapters covering specific LIHTC topics and issues that describe in some detail how the IRS is examining credits issues such as basis and developer fee. As needed, the Department will rely upon the 8823 Guide for assistance in evaluating projects. It can be found on the Internet at www.novoco.com/audit_guide.htm or www.irs.gov/bus_info.

Developers should be aware of the contents of the 8823 Guide. However, the 8823 Guide itself should not be used as a legal reference. Per the IRS, "The Guide should not be used or cited by taxpayers as authority for setting or sustaining a technical position when filing tax returns for any period for which the taxpayer is subject to IRC Section 42 requirements. Taxpayers can rely upon and cite the Internal Revenue Code and formal IRS guidance as referenced extensively in the tax and footnotes."

EXHIBIT A – PUBLIC COMMENTS AND RESPONSES

Minutes and Comments from the Public Hearing:

1) Friday, October 21, 2011, 1:00 p.m. to 3:00 p.m.
Salem, Oregon Housing and Community Services, Room 124a/b:

Attending from Oregon Housing and Community Services Department (OHCS or the Department) are Jodi Enos, Betty Markey, Carol Kowash, Shelly Cullin, David Summers and Susan Bailey.

No one from outside the Department was in attendance for the hearing.

Jodi Enos opened the public hearing for the 2012 Draft Qualified Allocation Plan (QAP) for the Low Income Housing Tax Credit (LIHTC) Program this Friday, October 21, 2011 at 1:01 p.m.

"Hi, This is Jodi Enos. I am the LIHTC Program Representative for the State of Oregon Housing and Community Services Department. This is the 2012 Draft Low-Income Housing Tax Credit Qualified Allocation Plan Hearing. With me today is Susan Bailey, our recorder. Today is Friday, October 21, 2011. It is now 1:01 p.m. and the hearing is now in session. Currently there is no one present other than OHCS department staff. We will now close the meeting and reopen it if others arrive."

"It's Jodi Enos again, Oregon Housing, and we are re-opening the meeting at 1:51 p.m. I am going to present the changes proposed to the 2012 Draft QAP."

"The first change can be found on Page 5, regarding Temporary Notices. Oregon Housing added the language, that **The Department may incorporate any changes for which the Department has issued adequate public notice."**

"The next change can be found on Page 10. It's regarding the Enhanced Credit (also known as the Basis Boost). In 2008, HERA amended IRC Section 42(d)(5)(C) by adding a third type of high cost area eligible for the 130% Basis Boost. This third type is defined as any building designated by OHCS as requiring the enhanced credit in order for such a building to be financially feasible. The language has been changed from ~~Projects that address workforce housing needs, as per the Needs Analysis in the CFC~~ to **Projects located in an area where workforce housing needs are identified in the OHCS Needs Analysis as a number one priority in the current or prior year's CFC application."**

"Existing LIHTC Properties and Over-Income Tenants: This change can be found on Page 15. The Department added clarification language to its relocation policy as follows: **Applicants requesting a subsequent allocation of credits for existing LIHTC projects still in their extended use period, permanent relocation of households who qualified under the original credit allocation, is not allowed. The IRS has provided guidance that if the incomes of existing households (previously qualified under the original allocation) exceed income limits in place at the time subsequent credits are allocated, the households will remain protected third-party beneficiaries under the LIHTC program as stated in the 8823 Audit Guide. OHCS may not award subsequent tax credit allocations to existing LIHTC projects proposing permanent relocation of tenants above 60% AMI, but below 140% AMI."**

"Page 16: Priority for Federally Funded Projects: The Department added the language: **Acquisition and rehabilitation of expiring use projects, especially those that include federal funding programs such as HOPE VI, Section 202, Section 811, RD or HUD project-based rental subsidy."**

Jodi continued, "Eligible Applicants - Page 16: Language regarding eligible applicants has been modified to align with Oregon Administrative Rules governing the LIHTC program as follows: **Any entity legally doing business in the State of Oregon and not subject to debarment or other exclusion by OHCS or another state or federal agency may apply for a reservation of Low Income Housing Tax Credits as provided in OAR 813-050-0010. However, please refer to the applicable Department application under Sponsor Capacity to review expectations."**

"The Minimum Affordability Period language has been changed, on Page 17: Language has been added to clarify that Housing Council sets policy related to the affordability period commitment required by project owners, as follows: **There must be a legal commitment by the sponsor and proposed owner satisfactory to OHCS that the project will continually meet the applicable fraction, rent restrictions and such other project requirements for a minimum of years of affordability as determined by Housing Council."**

"The next change can be found on Page 18, regarding Sponsor Loans: Clarifying language regarding sponsor loan requirements has been added as follows: **If any funding sources are being loaned by the general partner or managing member to the limited partnership or limited manager, the Department may require a legal opinion verifying to OHCS' satisfaction that such loans have specified terms of repayment, consistent with the expectation that the project can meet such cash flow needs. Further analysis and detail of the repayment assumptions may be required by the Department at any time."**

"Developer Fee has been modified on Page 18: The calculation of developer fees as a percentage of project cost must net out the development fee and **project reserves** and other cash accounts from the total project cost. Specifically, the calculation of Developer Fee divided by (Total Development Cost minus Developer Fee minus **All Project Reserves and Capitalized Cash Accounts**). Furthermore, the developer fee policy has been modified to add clarification that if **requested changes fall within the limits established in the developer fee policy, the Housing Division Administrator may recommend changes to the Director without Finance Committee review."**

"On page 20, Site Reviews and Building Standards language has been modified and adds the following language: The site review and building standards section has been updated to reflect current Department procedure: **The Department requires all sponsors for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment by an approved third party, satisfactory to the Department, unless an exception is provided in writing by OHCS."**

"The Department may perform inspections prior to, during and following a funding award by OHCS or an OHCS-approved third-party representative. The Department, based on such inspections or otherwise, may prevent a sponsor from advancing their application, terminate or revoke a reservation or allocation, or exercise other remedies, including, but not limited to, requiring changes to the application or project scope of work or budget."

"The Department may verify if work has been performed to its satisfaction. The Department may require remediation of unsatisfactory work or conditions. The OHCS Architectural Standards and Building Enclosure Rehabilitation Guide can be found on the Department's website."

"Reserve Accounts language, on page 25, has been added as follows: **The Department may require capitalized or cash account reserves (including, but not limited to, replacement reserves, operating reserves, transition reserves, liquidity reserves, guarantee reserves, etc.) to remain in the project**

through the entire affordability period and be used for their designated purpose or other purposes approved or negotiated by the Department. OHCS may require securitization or use rights with respect to such reserves as it deems appropriate."

Jodi continued, "Tax Credit Pricing, on Page 25: The following language has been added: **OHCS reserves the right to adjust the amount of a tax credit award or any other OHCS funding source if there has been an increase in LIHTC pricing between the application and partnership closing. At the Department's discretion, any increase may be subject to the following distribution formula:**

- **Up to 50% percent of the increase in LIHTC equity due to pricing increase may be used for necessary, justifiable cost increases, approved by OHCS, or to reduce deferred developer fee. The remaining balance shall be used to reduce the permanent loan, sponsor loans, tax credit allocation or other OHCS funding sources as determined by the Department."**

"Increases for specific, hard cost purposes, as required by the investor, may receive an exception to the above policy, pending Department approval of hard cost scope of work."

"OHCS reserves the right to request additional information and otherwise to supplement its financial assessment at any time. Furthermore, the Department requires that it be immediately informed of the negotiated tax credit price at all times. OHCS also reserves the right to determine, in its sole discretion, whether the letters of interest or intent, award letters, or commitment letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment. A change in the financing source or financing terms, among other things, after reservation of credits may, at the sole discretion of the Department, result in all or a part of the credits being recaptured, reduced or returned."

"If accurate tax credit pricing information is not provided to the Department upon its request, or incomplete, misleading or false information is given, the Department may exercise any and all remedies provided in this QAP or available in law, including, but not limited to, rescission of any department resources awarded. Further, the Department may take such factors in determining whether or not to accept future applications or make subsequent LIHTC or other funding awards to applicants, or any member thereof."

Jodi asked, "Are there any questions or comments regarding the presented changes? None present. It is now 2:00 p.m. We are closing the meeting and we will re-open at a later time if anyone arrives."

No public testimony was given.

"It is now 3:01 p.m. and we are closing the public hearing for the 2012 Draft Qualified Allocation Plan." Jodi concluded.

Hearing concluded 3:02 p.m.

Geller Silvis & Associates, Inc.

November 4, 2011

Via E-Mail and US Mail

Oregon Housing and Community Services
Attn: QAP – LIHTC Program

re: **2011/2012 QAP Draft Comments**

To Whom it May Concern:

Thank you for posting the draft Qualified Allocation Plan (QAP) for the Low Income Housing Tax Credit Program (LIHTC) on the Department's website for comment.

As a firm with more than 18 years of experience in assisting non-profit organizations in Oregon to develop affordable housing using the LIHTC program we recognize the importance of this governing Plan. I am confident that the changes proposed are well intentioned, but I recommend that the Department pause and consider some possible unintended consequences from instituting these revisions at this particularly fragile time in our state's economy. Overall the draft, i) increases the regulatory burden on the agency as well as its partners in affordable housing; ii) will likely encourage a lowering of investment equity pricing to merely the amount needed to preserve Agency funding commitments prior to closing, and iii) creates uncertainty about at what point, if any, during the development process a commitment has been made by OHCS to provide funding to the project.

Our first recommendation is to extend the comment period for this QAP and potentially hold some working meetings with legal, accounting and investment professionals from the field to obtain technical input. There are several undefined terms in the draft QAP that will create uncertainty and additional administrative expense for the Department as well as its non profit partners. Requirements such as "immediate notification…at all times" are broad and unclear. What will constitute notification? What is "immediate" and what does "at all times" mean? Since the consequences of non compliance with this terminology is "all or part of the credits being recaptured, reduced or returned" a definition would be best for all concerned.[1] Generally, this broad, indefinite language also gives the impression that there is no time limit for the Department's determination of award. Thus, it will likely be difficult and expensive for sponsors to obtain satisfactory legal opinions about whether or not tax credits are awarded to the development. We would recommend simply defining the notification process and advising whether it involves verbal commitments, ongoing pricing discussions, written commitments, or other specific provisions. Establishing a specific number of days or other benchmarks might be an effective clarification as well.

[1] QAP Draft - Page 25.

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Additionally, these provisions give the impression that the Department is responding to a crisis in its portfolio. To our knowledge the universe of established awardees is very small. Further, as among that group, the number of awardees that have consistently had problems in delivering projects is even smaller. There is no doubt that there have been serious problems, particularly in cash management and construction administration, but the new provisions in this draft will not really solve those problems; they will simply add to the burdens of administration and create a more chaotic, ill defined operating environment. More direct and simple adjustments can readily be made to address the problems the Department has experienced with a small group of awardees without increasing its regulatory burdens.[2]

There are also a number of provisions in the current draft QAP that are likely to limit the amount of equity investment coming to Oregon and the quality of developments supported. For example, the statement that the Department's funding may be reduced just prior to the finance closing if the Sponsor raises additional equity will likely result in lower equity prices, and fewer investment dollars in Oregon. Most investors would not be motivated to pay a higher equity price if the other sources will be withdrawn immediately. While investors probably are very welcoming of this provision in the QAP, as it will definitely increase their investment yields, it will likely be suboptimal, in the end, for Oregon. later 16 Such a review can occur as has been done in the past, to prevent developer windfalls and to ensure that additional dollars go to projects, not to developers.

While the proposed additional layers of regulatory requirements are no doubt intended to make the highest and best use of existing housing dollars, they will not only cost more money for the Department and its partners, they will be impractical to administer consistently. In order to fairly apply these requirements to all projects the Department would have to recruit a significant number of technically proficient individuals. This would result in an impressive increase in administrative expense during a biennium wherein basic services to Oregonians are being cut across the board. If there were no simpler solutions to the current administrative problems the Department faces, then this could potentially be justified. I am confident, however, that more careful and simple approaches can easily be implemented without a major staffing increase. Again, we recommend that you consider a short delay in implementation of the proposed QAP as drafted, and convene a working group of experienced legal, accounting and investment professionals to assist either with better defining the provisions of this QAP draft, or with finding, where possible, alternate systems that will also ensure the most prudent use of scarce housing resources.

Sincerely,

Anna L. Geller

Anna L. Geller
President

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[2] QAP Draft Page 25

Oregon
John A. Kitzhaber, MD, Governor

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January 3, 2012

Ms. Anna L. Geller
Geller Silvis & Associates, Inc.
4905 SW Griffith Drive, Suite 204
Beaverton, OR 97005

RE: Draft 2012 Low Income Housing Tax Credit Qualified Allocation Plan (QAP).

Dear Ms. Geller,

Thank you for the time and energy you committed to reviewing the draft 2012 Qualified Allocation Plan. Your response was reviewed and discussed by the full team of managers involved with the QAP and our agency's Finance Committee. The topics and issues you raised deserve more than a simple reply, but with the deadline for publishing a revised QAP upon us, we wanted to confirm what changes would be making for the 2012 version of the document.

The Department's work on revisiting all its policies and procedures is just beginning. With the issues facing our economy and our partners, we feel it is time to step back and take a serious look at all the ways our policies, practices, and priorities affect the development and preservation of affordable housing.

Towards this effort, we hope to connect with you and other partners beginning in January. We can talk further about the issues you identified in your letter and start the larger conversations about how we can work together better as we face dwindling resources and increasing need.

The Department appreciates your support of utilizing scarce resources to their highest and most useful potential in order to provide housing opportunities to low income Oregonians. The intent of provisions referenced in the footnotes of your letter are to ensure efficient and effective use of scarce state resources. Additionally, Section 42 requires the Department to limit the credit award to only the amount needed for a project to be financially feasible. To this end, OHCS must be informed of pricing and other sources to the project so that underwriting assumptions are kept current and accurate. OHCS cannot say with exactitude whether or not the credits awarded at the beginning of the project will indeed be the amount allocated at Form 8609's if a project receives additional resources or tax credit equity. However, it is not the Department's intent to unreasonably withhold funding awards that a project needs to be viable. We have added language to clarify the intent of this provision and will continue to work with partners on determining the highest and best use of scarce resources. The proposed and revised language can be found on page 25 of the QAP:

> ***If there is an increase in pricing subsequent to a reservation tax credits due to a rapid inflation of equity markets, OHCS reserves the right to adjust the amount of a tax***

credit award or any other OHCS funding source. The Department may utilize the following distribution formula as a guideline for avoiding project over-subsidization:

- *Up to 50% percent of the increase in LIHTC equity due to pricing increase may be used for necessary, justifiable cost increases, approved by OHCS, or to reduce deferred developer fee. The remaining balance shall be used to reduce the permanent loan, sponsor loans, tax credit allocation or other OHCS funding sources as determined by the Department.*

Although the tax credit allocation amount may change based on Final Application analysis, this is not the norm. In order to ensure that an applicant has adequate assurance from the Department to engage commitments from other financing partners, the Department uses established timeframes for reserving and allocating resources through the Reservation and Extended Use Agreement, Carryover Allocation and Form 8609. To date, these benchmarks have been acceptable to both applicants and their funding partners.

Thank you again for your comments regarding the Draft 2012 Low Income Housing Tax Credit Qualified Allocation Plan. We appreciate you taking the time to meet and discuss these issues in person with us. Further, we look forward to the dialogue in the coming months that will enable the Department, in concert with its stakeholders, to find new solutions and opportunities to enhance the way we all participate in the development and preservation of affordable housing for low income Oregonians.

Sincerely,

Jodi L. Enos
Tax Credit Programs Representative
Multifamily Housing Section

Cc: QAP

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November 4, 2011

Ms. Jodi L. Enos
Tax Credit Programs Representative
Oregon Housing and Community Services
725 Summer Street NE
Salem, OR 97301

Dear Ms. Enos,

Thank you for the opportunity to comment on the draft Qualified Allocation Plan. I appreciate the chance to help guide Departmental policy in allocating its resources.

NHA fully supports all of the recommendations made by Oregon ON regarding the QAP. These seven recommendations are entirely consistent with QAP revisions that Northwest Housing Alternatives (NHA) would like to see. They are of great importance to the whole industry and, for this reason, I'll start by repeating them in full.

1) The concept of 'financial feasibility' should be defined to fully incorporate Owners' Group Recommendations.

Working together, OHCS and sponsors have learned a great deal about how to sustainably underwrite affordable housing developments. These "lessons learned" are the basis of the Owner's Group Recommendations, which consist of the following points:

1. Underwrite for Financial Viability
2. Provide Rent and operating subsidies (for lowest income targeted units)
3. Plan for and Fund long term capital improvements
4. Fund resident services
5. Reduce costs of public reporting and compliance
6. Develop opportunities and adequate developer fees to support sustainability and growth

Current QAP has underwriting requirements that are inconsistent with the Owner's Group Recommendations—e.g. maximizing debt, using a 1.20 DCR in year 1, etc. These requirements should be revised in the 2011 QAP to fully incorporate the Owner's Group Recommendations and thereby ensure that current and future projects are truly financially viable.

2) Market Studies (p. 18): The 3rd Party Market Study should be a 150-day condition, not an application requirement.

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The Internal Revenue Code's market study language is in Section 42(m)(1)(A)(iii) and it requires that:

"a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted *before the credit allocation* is made and at the developer's expense by a disinterested party who is approved by such agency." (Emphasis added)

Since successful CFC applicants receive a credit reservation rather than a credit allocation, the CFC process need not, and should not, require a market study. Many projects apply multiple times for 9% credits, yet market studies are good for only six months. Thus, requiring the market study at application frequently leads to an unnecessary duplication of costs.

The Department's conducts its own county by county analysis of priority population rankings, and these rankings should provide staff with the general information necessary to determine a project's viability in a particular location. The responses provided on the zoning certification provide additional key information necessary to determine about the suitability of a specific site for the sponsor's proposal. For successful applications, a market study provided within 150 days of a reservation letter (not 75 because market studies can take longer than 75 days) should be required to secure a reservation of credits.

3) Developer Fees (p. 55- 56): Maximum developer fees should be 15% maximum for all projects, regardless of type or size.

The current QAP states on p. 55 that "the reasonableness of [developers'] fees will be evaluated based on the risk and complexity of the proposed development."

On the risk front, every project subjects its sponsor to risks significant enough to merit a 15% developer fee. In the course of pursing a project, sponsors take out large loans to acquire land and/or buildings and secure them with organizational assets, devote thousands of hours of staff time, and advance considerable sums on design and due diligence before they know they have a project.

On the complication front, subjective notions of complexity should be removed from the developer fee conversation because experience teaches that there are no "uncomplicated" projects. Rather, every project is extremely complicated in different ways. Current practice of pegging sponsors' compensation to the fuzzy concept of complexity pushes them towards certain project types and away from others. For example, for developer fee purposes, a $5M acquisition / rehab of a 30 unit Preservation project with HUD / RD financing and significant relocation is currently deemed "less complicated" that a $5M new construction project of the same size. This dynamic is contrary to the Department's Preservation goals.

4) Deferred versus cash developer fee split at time of Final Application (p. 57): So long as a project stays within (a) the number of credits OHCS reserved for it and (b) the total developer fee amount OHCS saw and approved via the application and carryover processes, no decrease in deferred developer fee should require approval by the Department.

Depending on circumstances entirely beyond the sponsor's control--increases or decreases in construction loan interest rates; site/building conditions that drive the need to utilize hundreds of thousands of dollars of hard cost contingency--the amount of cost savings or overruns at the time of Final Application can swing wildly. These cost savings or overruns determine the amount of developer fee a sponsor must defer. Under the current system, sponsors assume all the risk that things won't go as well as planned but are severely limited in their ability to reap the benefits of projects that go better than expected. A fair compensation system would be neutral in exposing

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sponsors to the inherent financial uncertainties that accompany real estate development, rather than giving them the full potential downside but only part of the potential upside.

5) The waiting list (p. 45): OHCS should publish the waiting list.

Publishing this list would provide sponsors with clearer notions of a project's likely timeline, enabling them to most efficiently allocate their resources.

6) Application Scoring: Clearly differentiate preferences, priorities, and set-asides and incorporate them into the scoring process.

The QAP uses the language of preferences, priorities, and departmental set-asides without clearly explaining the hierarchical relationships (if any) between them. Providing clarity on this front would help sponsors better understand the department's top goals and synch development pipelines with them.

7) Application Scoring: The Departments should establish a policy of showing sponsors their scores for <u>each</u> criterion listed on pages 33-34, not just the aggregate.

Sponsors need transparency on how and where they lose points to improve their chances of getting funded. Providing only the aggregate score does not enable them to effectively improve their applications from year to year.

<u>Additional Comments</u>

In addition to the Oregon ON comments that we support, NHA has the following additional comments on the draft QAP changes that OHCS has published:

Draft Language:

<u>Existing LIHTC Properties and Over-Income Tenants - Page 15:</u>

Applicants requesting a subsequent allocation of credits for existing LIHTC projects still in their extended use period, permanent relocation of households who qualified under the original credit allocation, is not allowed.

<u>NHA Comment</u>: Sentence is difficult to understand and needs revision.

Draft Language

<u>Sponsor Loans - Page 18:</u>

If any funding sources are being loaned by the general partner or managing member to the limited partnership or limited manager, the Department may require a legal opinion verifying to OHCS' satisfaction that such loans have specified terms of repayment, consistent with the expectation that the project can meet such cash flow needs. Further analysis and detail of the repayment assumptions may be required by the Department at any time.

<u>NHA Comment</u>: The Department should eliminate this requirement. This is standard practice and closely reviewed by all investors. So long as a LIHTC investor is willing to treat a re-loan as bona fide debt, the Department should defer to that interpretation. Furthermore, while an Investor's counsel makes this determination for its clients, they won't share that work with the Department or us. So, the Department is asking for things they can't get without forcing significant additional legal cost.

NORTHWEST HOUSING ALTERNATIVES
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Draft Language

Site Reviews and Building Standards - Page 20:

The Department requires all sponsors for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment by ***an approved third party****, satisfactory to the Department, unless an exception is provided in writing by OHCS.*

NHA Comment: While the Department should have the right to reject a capital needs assessment as inadequate before funding a rehab project, it should not get into the business of deciding who is qualified to do this work. My suggested revision would be

The Department requires all sponsors for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment that is satisfactory to the Department, unless an exception is provided in writing by OHCS.

Draft Language

Reserve Accounts - Page 25:

The Department may require capitalized or cash account reserves (including, but not limited to, replacement reserves, operating reserves, transition reserves, liquidity reserves, guarantee reserves, etc.) to remain in the project through the entire affordability period and be used for their designated purpose or other purposes approved or negotiated by the Department. OHCS may require securitization or use rights with respect to such reserves as it deems appropriate.

NHA Comment: This language should be removed because it will lead to unintended consequences that are disadvantageous for projects. Reserve accounts are assets of the partnership, meaning that they belong 99.99% to the LIHTC investors when the deals dissolve at year 15. If the Department doesn't allow sponsors to exercise the spend-down provisions we negotiate into partnership agreements to ensure that the reserve account dollars get spent on the capital projects immediately prior to year 15—rather than reverting to the investors—it's working at cross-purposes with the goal of maintaining high-quality housing for generations.

Thank you for this opportunity to comment.

Sincerely,

Jonathan Trutt
Housing Director

Oregon
John A. Kitzhaber, MD, Governor

Housing and Community Services
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January 3, 2012

Mr. Jonathan Trutt
Housing Manager
Northwest Housing Alternatives
2316 SE Willard Street
Milwaukie, OR 97222-7740

RE: Draft 2012 Low Income Housing Tax Credit Qualified Allocation Plan (QAP).

Dear Mr. Trutt,

Thank you for the time and energy you committed to reviewing the draft 2012 Qualified Allocation Plan. Your response was reviewed and discussed by the full team of managers involved with the QAP and our agency's Finance Committee. Many of the topics and issues you raised deserve more than a simple reply, but with the deadline for publishing a revised QAP upon us, we wanted to confirm what changes would be making for the 2012 version of the document.

The Department's work on revisiting all its policies and procedures is just beginning. With the issues facing our economy and our partners, we feel it is time to step back and take a serious look at all the ways our policies, practices, and priorities affect the development and preservation of affordable housing.

Towards this effort, we hope to connect with you and other partners beginning in January. We can talk further about the issues you identified in your letter and start the larger conversations about how we can work together better as we face dwindling resources and increasing need.

Until that time, following are responses to your specific comments on the draft QAP for 2012.

Responses to comments provided on behalf of Oregon ON:

1) Although not specifically published, OHCS shares many of the underwriting concepts outlined in your letter. Further, the Department relies on best practices published annually by the National Council of State Housing Agencies (NCSHA) to develop underwriting criteria and standards. We look forward to further discussion with Oregon ON related to the refinement and communication of such standards.

While the upfront Third-Party Market Analysis does add cost to the application, it is imperative that the Department verify that there is a market for the project prior to award. Further, due to the dynamic nature of local housing markets, market analyses older than six months may not reflect actual market conditions. Because of the scarcity of resources, it is essential that the

Department fund projects where they are ***most*** needed and relies, in part, on the information provided in the Market Analysis to make this determination.

3) OHCS recognizes that adequate developer fees are necessary for sponsors to sustain operations and also serve as a "contingency of last resort" for projects. OHCS' current developer fee emphasizes the need for adequate and reasonable developer fees: "applications that include limited or no cash development fees may be financially infeasible." Although not addressed in the Draft 2012 QAP, reviewing its developer fee policy is a sincere priority for the Department. We look forward to engaging serious input from our partners on this policy, especially from Oregon ON.

4) See #3 above.

5) The previous "Next Available Project List Policy (Wait List)" was confusing and has therefore been removed and has been replaced by the current "Unused Credit Authority" policy. The Department will utilize unused credit authority according to the four scenarios described on page 22 of the QAP:

   When tax credits are not awarded or are returned, the Department, at its sole discretion, may do any of the following:

   1. *If needed and available, fill project gaps for awarded projects that have not met Carryover.*
   2. *Fund the next highest-scoring CFC project from the current round that matches or is closest to the amount of LIHTC and other department resources available. The prospective applicant will be given no more than 30 days to evaluate its own financial position and determine if the organization has the capacity to proceed with LIHTC or other resources, if available. The Department will require that a selected project have a reasonable timeline to proceed to completion. The project sponsor will be subject to timeframes outlined in this QAP as well as timeframes of award (i.e. the 75-day Reservation Letter conditions). This may include, but is not limited to Carryover application requirements. The Department will maintain scoring rankings for projects and utilize such an order accordingly until all LIHTC resources for that year have been exhausted or until October 1st of each year (whichever is later).*
   3. *To the best of its ability, the Department will maintain the Department desired funding split between rural and urban funded projects.*
   4. *The Department may issue RFP's or other special application processes for projects to compete for the remaining tax credits.*

6) OHCS currently publishes Department priorities upfront in the application, through its needs analysis, metro / non-metro split (55/45) as well as its 50 percent set aside for preservation projects. Further, the Department releases its scoring criteria with every CFC funding application package.

7) Following the 2011 funding round, scores were released by region and set aside. Although the Department does not release scores based on each criterion, it is Department policy that Regional Advisors to the Department "debrief" unsuccessful applicants on those areas where their application could be improved.

Responses to additional comments provided by NHA:

Existing LIHTC Properties and Over-Income Tenants – Page 15: The draft language in the QAP has been changed to read:

> *Permanent relocation of households who qualified under the original credit allocation is not allowed for applicants requesting a subsequent allocation of credits for existing LIHTC projects still in their extended use period.*

This language is intended to articulate OHCS policy which does not allow permanent relocation of tenants in existing affordable housing projects due to additional Departmental funding, including LIHTC projects still in their extended use periods.

Sponsor Loans – Page 18: The Department has a fiduciary responsibility to verify that the reasonable repayment of sponsor loans are verified and that the project file reflects this. The Department only requires additional support for sponsor loans **not shown as repaid from cashflow on the Department's proforma.** Further, this information is essential for audit function purposes and is reasonable given the Department's responsibilities under Section 42.

Site Reviews and Building Standards – Page 20: Thank you for recommending this correction. Currently the Department does not require approval of third parties conducting rehabilitation assessments, but does reserve the right to create such a list. The Draft 2012 QAP language has been amended to read:

> *The Department requires all sponsors for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment that is satisfactory to the Department, unless an exception is provided in writing by OHCS.*

Reserve Accounts – Page 25: The Department does not intervene in partnership spend-down plans, however, retains notification and approval rights of reserve accounts. Although in practice OHCS does not generally exert such approval requirements, the Department retains the authority to do so. The Department will not unreasonably withhold funds for reasonable project expenditures. We have added language to clarify the intent of this provision, which can be found on page 25 of the QAP:

> *The Department may require capitalized or cash account reserves (including, but not limited to, replacement reserves, operating reserves, transition reserves, liquidity reserves, guarantee reserves, etc.) to remain in the project through the entire affordability period and be used for their designated purpose or other purposes approved or negotiated by the Department. OHCS may require securitization or use*

rights with respect to such reserves as it deems appropriate. ***However, the Department will not unreasonably withhold funds for justifiable project expenses or uses.***

Thank you again for your comments regarding the Draft 2012 Low Income Housing Tax Credit Qualified Allocation Plan. Your efforts in reviewing and providing input on the QAP are sincerely appreciated. We look forward to the dialogue in the coming months that will enable the Department, in concert with its stakeholders, to find new solutions and opportunities to enhance the way we all participate in the development and preservation of affordable housing for low income Oregonians.

Sincerely,

Jodi L. Enos
Tax Credit Programs Representative
Multifamily Housing Section

Cc: QAP
John Miller, Executive Director, Oregon ON

NATIONAL HOUSING TRUST

November 4, 2011

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

Re: Oregon's Draft 2012 Qualified Allocation Plan

Dear Mr. Gillespie:

The National Housing Trust is a national nonprofit organization formed to preserve and revitalize affordable homes to better the quality of life for the families and elderly who live there. Saving affordable housing is the essential first step in addressing our nation's housing dilemma. Preservation is integral to building and maintaining sustainable, economically vibrant and healthy communities. The National Housing Trust engages in housing preservation through real estate development, lending and public policy. Over the past decade, NHT and our affiliate, NHT-Enterprise Preservation Corporation, have preserved more than 22,000 affordable apartments in all types of communities, leveraging more than $1 billion in financing.

We appreciate the opportunity to comment on Oregon's draft 2012 Qualified Allocation Plan. The Trust fully acknowledges and appreciates the entire set of preservation policies and programs established by Oregon Housing and Community Services. The comments below refer directly and specifically to OHCS's draft QAP and the current Consolidated Funding Cycle as they relate to the tax credit program and are in no way meant to imply a lack of appreciation for your other successful preservation programs and policies or the current challenges in the tax credit market.

In summary, we urge OHCS to:

- Maintain its ***25% set-aside*** for proposals involving the preservation and rehabilitation of existing multifamily rental housing in the final 2012 QAP and the ***50% set-aside established in the CFC.***
- ***Continue including green building practices***, healthy building materials and energy efficient design features in Oregon's tax credit program.

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

Low Income Housing Tax Credits and Preservation in Oregon

At-risk properties in Oregon

Project-based Section 8 properties with contracts expiring by 2013:
- 7,899 assisted units in 222 properties
- 60% of which are owned by for-profit owners

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

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

Preserving and rehabilitating existing housing has proven to be a cost-effective method to provide rental housing to low-income families and seniors. Nationwide, rehabilitation projects require almost 40% less tax credit equity per unit than new construction developments. In addition, preservation prolongs federal investment in affordable housing properties.

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

Addressing the Equity Shortage: New Tools and Resources

As OHCS knows, the American Reinvestment and Recovery Act (ARRA) provided significant tools and resources to help housing development partners address the equity shortage. One such resource is the 30% basis boost. As acknowledged in the draft QAP, OHCS can make appropriate use of an authorized 30% basis boost to ensure that tax credits are allocated to improve the feasibility for projects. **The Trust supports OHCS's decision to direct the basis boost towards the preservation of existing affordable rental properties and projects located in Transit-Oriented Districts.**

ARRA also included a dramatic increase in **Weatherization Assistance Program (WAP)** funding for residential energy efficiency improvements. While acknowledging that single family homes need and should be weatherized, we strongly support OHCS's efforts to ensure that low income families and seniors in multifamily housing have an opportunity to benefit from weatherization investments. **We urge OHCS to continue its work to target Weatherization Assistance Program funds for use in existing affordable housing pursuing LIHTC allocations and commend OHCS on not only prioritizing multifamily housing, but specifically properties at-risk of losing federal housing subsidies.** A full 36% of the ARRA WAP funds to date have been used to weatherize affordable multifamily properties around the state.

Sustainable Communities and Transit Connected Affordable Homes

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

The National Housing Trust supports the state established selection criteria in OHCS's draft QAP for access to community amenities, especially public transportation, as well as the stated program goal to preserve expiring use projects. Providing affordable rental housing in areas with access to public transportation is an important strategy for encouraging community vitality, promoting diverse neighborhoods, and ensuring that low-income families have good access to jobs and services. Because transportation and housing are the two largest expenses for households across the country, it also helps ensure that low-income families are able to fit both of these necessities into their budgets. Rehabilitating existing housing near public transportation and maintaining its affordability prevents low-income families from being forced to move to the suburban fringe and reduces the need for sprawling development, which is likely to offer fewer affordable transportation options.

Preservation is Environmentally Friendly

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

We enthusiastically support the green building practices, healthy building materials and energy efficient design features included in OHCS's tax credit program, specifically the Green Building Standards included in the Consolidated Funding Cycle applicable to the tax credit program.

Conclusion

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

Sincerely,

Michael Bod

Michael Bodaken, President

Oregon
John A. Kitzhaber, MD, Governor

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January 3, 2011

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

RE: Draft 2012 Low Income Housing Tax Credit Qualified Allocation Plan (QAP).

Dear Mr. Bodaken,

Thank you for taking time to comment on 2012 Low Income Housing Qualified Allocation Plan and for your support of the Department's efforts and policies to preserve and enhance multifamily affordable rental housing. The award of the 130% Basis Boost and set aside targeting for preservation projects are some of the policies that the State Housing Council continues to strongly support in order to preserve project based rental subsidies on existing affordable housing properties.

An important element of preservation, along with other rehabs and new construction is green building. The decision to make green-building a requirement, rather than scored criteria, along with the award of the Basis Boost for Transit Oriented Districts demonstrates OHCS' continued commitment to sustainability and energy efficiency. Again, the Department is pleased your organization shares the perspective that these types of developments not only promote healthy projects, but also healthy communities.

Thank you again for your comments regarding the Draft 2012 Low Income Housing Tax Credit Qualified Allocation Plan.

Sincerely,

Jodi L. Enos
Tax Credit Programs Representative
Multifamily Housing Section

Cc: QAP

What We Do Matters!

EXHIBIT B – OREGON AFFORDABLE HOUSING POLICY STATEMENTS

OREGON AFFORDABLE HOUSING POLICY STATEMENT

Oregon State Housing Council

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

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

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

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

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

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

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

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

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

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

OREGON AFFORDABLE HOUSING POLICY CRITERIA

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

i. FINANCING AND NEED

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

ii. INTEGRATED AND QUALITY DEVELOPMENT

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

iii. PROPERTY MANAGEMENT

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

iv. LONG TERM PROGRAM/SERVICES SCOPE AND MANAGEMENT

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

v. CAPACITY BUILDING

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

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

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

EXHIBIT C – 2012 QUALIFED ALLOCATION PLAN POLICY CHANGES

Policy Changes for the 2012 Qualified Allocation Plan (QAP)

Existing Language / **Added Language** / ~~Removed Language~~

Public Notices - Page 5:

The Department may incorporate any changes for which the Department has issued adequate public notice.

OHCS Basis Boost Policy - Page 10:

~~c. Projects that address workforce housing needs, as per the Needs Analysis in the CFC~~

c. **Projects located in an area where workforce housing needs are identified in the OHCS Needs Analysis as a number one priority in the current or prior year's CFC application.**

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

Existing LIHTC Properties and Over-Income Tenants - Page 15:

Permanent relocation of households who qualified under the original credit allocation is not allowed for applicants requesting a subsequent allocation of credits for existing LIHTC projects still in their extended use period. The IRS has provided guidance that if the incomes of existing households (previously qualified under the original allocation) exceed income limits in place at the time subsequent credits are allocated, the households will remain protected third-party beneficiaries under the LIHTC program as stated in the 8823 Audit Guide. OHCS may not award subsequent tax credit allocations to existing LIHTC projects proposing permanent relocation of tenants above 60% AMI, but below 140% AMI.

Priority for Federally Funded Projects - Page 16:

- **Acquisition and rehabilitation of expiring use projects, especially those that include federal funding programs such as HOPE VI, Section 202, Section 811, RD or HUD project-based rental subsidy**

Eligible Applicants - Page 16:

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

Any entity legally doing business in the State of Oregon and not subject to debarment or other exclusion by OHCS or another state or federal agency may apply for a reservation of Low Income Housing Tax Credits as provided in OAR 813-050-0010. However, please refer to the applicable Department application under Sponsor Capacity to review expectations.

Minimum Affordability Period - Page 17:

There must be a legal commitment by the sponsor and proposed owner satisfactory to OHCS that the project will continually meet the applicable fraction, rent restrictions and such other project requirements for a minimum of years of affordability as determined by Housing Council.

Sponsor Loans - Page 18:

If any funding sources are being loaned by the general partner or managing member to the limited partnership or limited manager, the Department may require a legal opinion verifying to OHCS' satisfaction that such loans have specified terms of repayment, consistent with the expectation that the project can meet such cash flow needs. Further analysis and detail of the repayment assumptions may be required by the Department at any time.

Developer Fee - Page 18:

The calculation of developer fees as a percentage of project cost must net out the development fee and **project reserves** and other cash accounts from the total project cost. Specifically:

$$\frac{\text{Developer Fee}}{(\text{Total Development Cost} - \text{Developer Fee} - \textbf{All Project Reserves and Capitalized Cash Accounts})}$$

The Department's Finance Committee will make the final determination of developer fee reasonableness. **However, if the requested changes fall within the limits established above, the Housing Division Administrator may recommend changes to the Director without Finance Committee review.**

Site Reviews and Building Standards - Page 20:

The Department requires all sponsors for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment that is satisfactory to the Department, unless an exception is provided in writing by OHCS.

The Department may perform inspections prior to, during and following a funding award by OHCS or an OHCS-approved third-party representative. The Department, based on such inspections or otherwise, may prevent a sponsor from advancing their application, terminate or revoke a reservation or allocation, or exercise other remedies, including, but not limited to, requiring changes to the application or project scope of work or budget.

The Department may verify if work has been performed to its satisfaction. The Department may require remediation of unsatisfactory work or conditions. The OHCS Architectural Standards and Building Enclosure Rehabilitation Guide can be found on the Department's website.

Reserve Accounts - Page 25:

The Department may require capitalized or cash account reserves (including, but not limited to, replacement reserves, operating reserves, transition reserves, liquidity reserves, guarantee reserves, etc.) to remain in the project through the entire affordability period and be used for their designated purpose or other purposes approved or negotiated by the Department. OHCS may require securitization or use rights with respect to such reserves as it deems appropriate. However, the Department will not unreasonably withhold funds for justifiable project expenses or uses.

Tax Credit Pricing - Page 25:

If there is an increase in LIHTC in pricing subsequent to a reservation tax credits due to a rapid inflation of equity markets, OHCS reserves the right to adjust the amount of a tax credit award or any other OHCS funding source. The Department may utilize the following distribution formula as a guideline for avoiding project over-subsidization:

- **Up to 50% percent of the increase in LIHTC equity due to pricing increase may be used for necessary, justifiable cost increases, approved by OHCS, or to reduce deferred developer fee. The remaining**

balance shall be used to reduce the permanent loan, sponsor loans, tax credit allocation or other OHCS funding sources as determined by the Department.

Increases for specific, hard cost purposes, as required by the investor, may receive an exception to the above policy, pending Department approval of hard cost scope of work.

OHCS reserves the right to request additional information and otherwise to supplement its financial assessment at any time. Furthermore, the Department requires that it be immediately informed of the negotiated tax credit price at all times. OHCS also reserves the right to determine, in its sole discretion, whether the letters of interest or intent, award letters, or commitment letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment. A change in the financing source or financing terms, among other things, after reservation of credits may, at the sole discretion of the Department, result in all or a part of the credits being recaptured, reduced or returned.

If accurate tax credit pricing information is not provided to the Department upon its request, or incomplete, misleading or false information is given, the Department may exercise any and all remedies provided in this QAP or available in law, including, but not limited to, rescission of any department resources awarded. Further, the Department may take such factors in determining whether or not to accept future applications or make subsequent LIHTC or other funding awards to applicants, or any member thereof.

EXHIBIT D – MANAGEMENT AGENT PACKET

The most recent Management Agent and Resident Services packet can be found at: http://www.ohcs.oregon.gov/OHCS/HRS_Reservation_Letter_Attach.shtml or be requested by contacting the Department at (503) 986-2000 or by mail at:

Oregon Housing and Community Services
ATTN: LIHTC Program Representative
725 NE Summer Street, Suite B
Salem, OR 97301-1266

EXHIBIT E – OHCS / RD MEMORANDUM OF UNDERSTANDING

RD MOU

MEMORANDUM OF UNDERSTANDING

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

INTRODUCTION

The Rural Housing Service of Rural Development, Oregon, an Agency of the U.S. Department of Agriculture, hereinafter referred to as "RHS", and the State of Oregon Housing and Community Services, hereinafter referred to as "OHCS," wish to enter into the following:

Memorandum of Understanding (MOU) regarding: 1) the general sharing of housing development information, 2) architectural requirements for joint funded RHS and OHCS developments, 3) the sources and uses of funds in projects receiving RHS funding and Low Income Housing Tax Credits, 4) the monitoring of Low Income Housing Tax Credit compliance in RHS funded projects, and 5) the availability of Low Income Housing Tax Credits for proposed RHS funded projects.

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

BACKGROUND

The IRS published regulations on September 2, 1992 to guide State agencies in monitoring compliance with the low-income housing tax credit requirements by owners of affordable housing properties. These regulations allow the State agency to implement review requirements that allow exceptions to the requirements to review tenant certifications, supporting documentation, and rent records of such properties to owners of RHS financed properties.

However, for OHCS to grant review exceptions on RHS financed properties, OHCS must enter into an agreement identified as a Memorandum of Understanding (MOU) with RHS whereby RHS will agree to provide OHCS with information concerning the income and rent of the tenants in the project. OHCS may assume accuracy of the information provided by RHS without verification. The original OHCS-RHS MOU signed 5-17-1993, and extended on 6-17-1994, expired on May 17, 1995. This year 2000 MOU reinstates the original MOU provisions and identifies additional considerations related to the exchange of project information and reservation of tax credits for RHS financed projects.

SCOPE OF AGREEMENT

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

PURPOSE

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

BOTH PARTIES AGREE

GENERAL INFORMATION

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

RHS and OHCS will inform any applicants seeking both Low Income Housing Tax Credits and RHS loan assistance that the MOU will be applied to the processing of their applications with OHCS and RHS.

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

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

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

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

PROJECT SPECIFIC INFORMATION

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

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

· Copy of Form FmHA 1924-13 "Estimate and Certificate of Actual Cost" indicating actual costs when construction is complete, including any cost analysis performed.

The following fee limitations will be adhered to:

a) builder's profit: up to 6% (as per QAP) of the construction cost as established by contract(s);

b) general overhead: up to 2% (as per QAP) of the construction cost as established by contract(s);

c) general requirements: up to 6% (as per QAP) of the construction cost as established by contract(s);

d) developer fee: up to 15% of the total development costs for tax credit purposes for new construction and rehabilitation costs; up to 5% of the acquisition cost for acquisition/rehab projects. (See attachment 1, Developer Fee Schedule.)

Rural Development staff and OHCS staff will review, at least annually, the fee norms on builder or general contractor charges (builder's profit, builder's overhead, and general requirements) established by this MOU. The developer fee or any other fees allowed will also be reviewed.

Any revised fee norms will be added as an amendment to this agreement and be used in subsequent analysis of loan or credit requests.

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

· reducing the amount of tax credit units requested, or

· reducing the level of assistance provided by one or more of the funding sources, or

· revising the uses to include eligible costs for any funding participants, provided the project enhancement is consistent with the intent of the RRH program and will assist the resident population being served by the housing.

· Parties to this agreement understand that in the event that excess assistance is not reduced through other means, RHS will adjust the amount of equity contribution (through the reduction of the loan) to ensure that RHS assistance provided is not more than is necessary to provide affordable housing, after taking account of assistance from all Federal, State, and local sources. Any reduction pursuant to this paragraph will require formal notification to the applicant, OHCS, and RHS National Office.

OHCS will provide RHS with:

· A list of all funded tax credit applications including project name and location, number of units, tax credits requested, amount of reservation, and project preference(s), if any.

· A copy of the Reservation Letter sent to the applicant/sponsor.

· A copy of the detailed cost breakdown used to estimate the amount of tax credits for which the developer would be eligible for those applicants that are seeking RHS financing.

· IRS Form 8609 "Low Income Housing Credit Allocation Certification" with a copy of the cost data used to determine the development cost of the RHS financed projects.

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

TENANT AND MONITORING INFORMATION

RHS will require signatures of all household members18 years of age and over, as required by IRS Code on tenant certifications. RHS will require as a part of project management, and consistent with OHCS policy, use OHCS .1, Low Income Housing Tax Credit Program Tenant Certification (Form TIC-1) for all placement and move-in certifications, in addition to any other administrative forms required by RHS. The OHCS initial certification form will be required to be dated effective on or before tenant move-in.

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

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

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

TAX CREDIT SET ASIDE FOR RHS PROJECTS

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

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

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

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

HOME Designated Units with RD Rental Assistance

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

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

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

OHCS Architectural Requirements

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

PERIOD OF AGREEMENT

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

MODIFICATION OR AMENDMENT PROVISION

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

ACCEPTANCE AND SIGNATURE OF EACH APPROVING PARTY

Director Date

Oregon Housing and Community Services

Department Services

State Director Date

USDA Rural Development Rural Housing

EXHIBIT F – OHCS CHARGES

Consolidated Funding Cycle	Charge
Application Charge	The lesser of $25 per unit or .5 percent of the total funds requested. Minimum charge is $100. (Group homes with five or fewer bedrooms are one unit.)
Request for Additional Resources to fill a gap caused by a reduction in federal tax credit pricing.	The lesser of $25 per unit or .5 percent of the additional funds requested. Minimum charge is $100. (Group homes with five or fewer bedrooms are one unit.)
Request for Additional Resources to fill a gap caused by increased project costs or the loss or reduction of a funding source (not tax credit pricing).	Request for any CFC funding sources other than LIHTC and OAHTC: 1 percent of the gross amount of the funds requested. Request for 4 percent and 9 percent LIHTC: 1 percent of the estimated equity to be generated by the additional tax credits. Request for OAHTC: $25 per unit or .5 percent of additional OAHTC requested. Minimum charge is $100.
4 percent and 9 percent LIHTC Reservation Charge	5.5 percent of annual tax credit amount for projects with 30 units or less; 6.5 percent of annual tax credit amount for projects with over 30 units.
9 percent LIHTC Carryover Application received after December 1 deadline.	$1,000, plus $200 per business day for each day late. Also $100 per hour for re-evaluation.
4 percent and 9 percent LIHTC Final Application received more than six months after Placed In Service date.	$1,000, plus $100 per month for each month late. Also $100 per hour for re-evaluation.
LIHTC Monitoring Charge (9 percent) and 4 percent credit projects that are non-risk sharing and non-conduit.	$35 per unit per year for first 15 years. $25 per unit per year for last 15 years.
Document Preparation Charge	$100 per recorded document
Application Charge	Total grant and loans requested less than $300,000 will pay $750. Total grant and loans requested of $300,000 or more will pay $1,500. All LIHTC will pay $2,000.
Construction Inspector	$2,200 for all projects.

EXHIBIT G – OHCS LIHTC COMPLIANCE MANUAL

The most recent LIHTC Compliance Manual can be found at: http://www.ohcs.oregon.gov/OHCS/HPM_LIHTC_Compliance_Manual.shtml or be requested by contacting the Department at (503) 986-2000 or by mail at:

Oregon Housing and Community Services
ATTN: LIHTC Program Representative
725 NE Summer Street, Suite B
Salem, OR 97301-1266