Oregon Housing and Community Services

2013 Qualified Allocation Plan

LOW INCOME HOUSING TAX CREDIT PROGRAM

Effective as of May 15, 2013

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2013 QUALIFIED ALLOCATION PLAN

This 2013 Qualified Allocation Plan (QAP) is effective commencing the allocation of 2013 Low Income Housing Tax Credits, unless an earlier date is mandated by the Internal Revenue Code of 1986, as amended (IRC or Code).

INTRODUCTION

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

This QAP was written to adhere to the established evaluation criteria and preference categories mandated by the federal tax credit program regulations (both proposed and final) issued pursuant to Section 42 of the IRC.

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, OHCS or Agency). 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 (Credit Authority) in accordance with an approved Qualified Allocation Plan. Section 42 of the IRC specifies the requirements for said Qualified Allocation Plan. The Department administers the LIHTC program in accordance with OAR Chapter 813, Division 50, and maintains a record of allocations and the balance of Credit Authority remaining for each calendar year. The records account separately for Credit Authority set asides under OAR 813-050-0010.

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 LIHTC 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 cannot and 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 disaster or disruption.

Public Comment Requirements for the QAP and Amendments

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. Prior to the issuance of any amendment to this QAP, the Department will issue a public notice which shall be for a period of a minimum of 30 days up to a maximum of six months prior to the date of issuance. The Department may adopt any amendments for which it has issued adequate public notice.

OHCS made the QAP available for review by interested members of the public before approval by the Governor. The draft Qualified Allocation Plan was subject to a 30-day public comment period. Notice of this public comment period was announced on the OHCS website, by mail to interested parties upon request, at Department stakeholder meeting(s), and by announcement(s) published in a statewide

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newspaper or collection of newspapers. The Department accepted written comments through letters, e-mails to susan.e.bailey@state.or.us, or testimony at scheduled public hearings. The public hearing for the draft 2013 QAP was held on March 1, 2013, after appropriate notice was given as required by law. Comments gathered from public meetings were considered 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 attached as Exhibit B. The specific policy changes proposed in the draft 2013 QAP are included as Exhibit C. The Council, together with the Department, reviewed the QAP contained herein on March 1, 2013 and recommended it for the Governor's approval. The Honorable John A. Kitzhaber, MD, Governor of the State of Oregon, approved this QAP on May 15, 2013, which becomes the effective date of the QAP.

After 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. Prior to the issuance of any amendment to this QAP, the Department will issue a public notice which shall be for a period of a minimum of 30 days up to a maximum of six months prior to the date of issuance. The Department may adopt any amendments for which it has issued adequate public notice.

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 will 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, 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, a request for a waiver or exception must be in writing and accompanied by justification satisfactory to the Department.

DISCLAIMER

Issuance of a LIHTC reservation pursuant to a Reservation and Extended Use Agreement, a LIHTC carryover allocation (Carryover) or placed In service allocation as indicated by the 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 conclusion with respect to any matter of federal or state income tax law. All LIHTC allocations are subject to the IRS regulations governing the LIHTC program, and sponsors are responsible for the determination of a project's eligibility and compliance. If statements in this QAP are in conflict with the regulations set forth in IRC Section 42, the IRC regulations shall take precedence. While this QAP and the applicable NOFA governs the Department's process of allocating LIHTC, sponsors may not rely upon this guide or the Department's interpretations of the IRC requirements.

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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 LIHTC 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
- NOFA Application and Allocation Processes
- Compliance

REQUIREMENTS OF THE QUALIFIED ALLOCATION PLAN

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

- Selection criteria for projects receiving LIHTC 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, IRC 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

The allocation of Oregon's per capita credit authority, returned credits, and Oregon's portion of the National Pool credits is done on a competitive basis, based upon project rankings determined during an application process established by the Department that is set out in a Notice of Funding Availability (NOFA) . All LIHTC allocations, including any increase in the allocation 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. The allocation of these tax credits are not subject to this QAP or the application process set

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out in the applicable NOFA. These tax credits are only available to projects that are financed using tax-exempt bond proceeds.

Program

Types of Tax Credits

- ***9% Tax Credits*:** Nine percent *competitive* tax credits receive approximately 70 percent of the qualified basis for new construction or substantial rehabilitation of qualified low-income buildings.
- ***Competitive 4% Tax Credits*:** Four percent *competitive tax* credits receive 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 tax credits are subject to allocation of the per capita credit authority pursuant to some type of scored application process as described and outlined in this QAP and the applicable NOFA.
- ***Non- Competitive 4% Tax Credits*:** Four percent *non-competitive* tax credits receive approximately 30 percent of the qualified basis of newly constructed or acquired and substantially rehabilitated buildings financed with tax-exempt bond proceeds.

Tax Credit Rate

Although the terms 9% and 4% are used above, these percentage figures are approximate. The IRS sets the actual tax credit percentages on a monthly basis. Due to the Housing and Economic Recovery Act of 2008 (HERA), the 9% tax 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. In 2012, this locked 9 per cent rate was extended to any project "Allocated" before January 1 2014, which effectively allows two or more years to place the project in service. All credits claimed on projects allocated after December 31, 2013 will be subject to the applicable floating percentage at time of rate lock or placed in service. Any projects expected to be allocated before the end of 2013 that allocate January 1, 2014 or later will also be subject to the applicable floating percentage at either placed in service or rate lock completion.

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 some cases, 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

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Department enter into a binding agreement to reserve the tax credit awarded 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. Most owners choose to lock the rate in this way.

- The Applicable Rate for projects receiving more than one year to allocate 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 month that **each** building is 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.

More recent changes to eligible basis include the following changes to keep in mind

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, currently $6,400) 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.

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4. IRC Section 42(d)(2)(D)(iii) repealed 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 or community needs show a preference for the housing in the area.
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 pro forma, including sources, uses, income and expenses and explanations of pro forma assumptions that identify the need for the additional basis boost to support the narrative
    (a) Substantial changes to the pro forma 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

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(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

To qualify for a LIHTC allocation, a project must meet a minimum low-income set aside requirement no later than the close of the first year of the credit period for such project.

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

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 IRC Section 42, the definition for "residential rental property" is generally the same as the definition used for tax-exempt rental housing bonds. This definition focuses on the following requirements:

- Residential rental properties must include separate and complete facilities for living, sleeping, eating, cooking and sanitation. However, unlike the requirements for units financed with tax-exempt bonds, certain single room occupancy housing used on a non-transient basis may qualify for LIHTCs 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 the eligible basis for the project 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 IRC 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 <u>by **all** financing partners.</u>
- If a project consists of both residential and non-residential areas, the non-residential portion will not preclude the residential portion from qualifying for LIHTCs. Determinations will be made on a reasonable basis to ensure that the costs for the commercial use portion of such a mixed-use project are not included in the LIHTC computation. As such, the Department will **require full disclosure on the financing, ownership and management of the community spaces in addition to all requested**

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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 regarding public use and non-discrimination. This would include the Federal Fair Housing Act Amendments of 1998, as amended .
- The project must meet habitability standards.
- If the project involves rehabilitation, there must be expenditures of at least $6,400 per unit or 20 percent of the unadjusted basis of the building, whichever is greater.
- The project must operate under the program's rent and income restrictions for a minimum of 30 years pursuant to the Reservation and Extended Use Agreement for the project.

Fair Housing

Use of the project by the general public must be consistent with all applicable federal, state, and local law. 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 further 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 continue to 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).

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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

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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. A phased project is in many cases discouraged by the Department. Also, you may not receive more than one phase awarded in any given NOFA cycle.

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. IT IS HIGHLY RECOMMENDED THAT A MANAGER'S UNIT IS DESIGNATED IF AN OWNER MIGHT NEED ONE AT A LATER TIME. We have a right to approve the designation of a manager's unit after the property is in compliance. There is no guarantee that we can approve or change size on a manager's unit in the future.

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:

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- 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 and subsequent households renting will remain protected third-party beneficiaries under the LIHTC program. *OHCS may not award subsequent tax credit allocations to existing LIHTC projects proposing permanent* relocation of tenants above 60% AMI, but below 140% AMI. Revenue guidance provides that If certain items are met in a residential building that is still in the extended use period of the of the initial LIHTC award, a unit in an existing building acquired by a new owner or in a rehabilitated building will be treated as a low-income unit even though the occupants incomes exceed the income limits at the beginning of the buildings credit period. The owner must

maintain and be able to provide documentation of the original income qualification and the units must be rent restricted.

Selection Criteria

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

- Provides a good return on public investment when considering benefits that are state, regional or local objectives.
- Creates affordable housing opportunities in areas identified with significant need.
- Addresses housing needs and market considerations (as defined by published data and third party market analysis).
- Encourages community collaboration.
- Leverages OHCS resources.
- Market considerations
- Establishes affordability as compared to market rate (preference for projects with affordable rents that are at least 10% below market rents)
- Identifies best use of resources and tax credit proceeds.
- Provides 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.
- Demonstrates the strength/capacity of the sponsor organization including but not limited to financial health, past compliance and development record, and construction and management experience with the project type and population. Development sponsor/owners with on-time and on-budget past projects may be preferred.
- Encourages approaches in design, planning, building and financing of housing that maintains quality and long term sustainability, durability and ease of maintenance of affordable units
- Evaluate the context of affordable housing in the community, including proximity to services and amenities appropriate to the tenant population, access to transportation, etc.
- Creates affordable housing opportunities in areas identified as previously underserved.
- Is consistent with Department architectural and design guidelines, including the historic nature of the buildings.
- Is consistent with Department energy efficiency guidelines and green building requirements, as identified in the NOFA.
- Has participation of local tax-exempt organizations.
- Creates housing for families with children.

The following may or will be preferred:

- Provides a preference will be given to projects located in a QCT, a designated state or federal empowerment/enterprise zone or Public Improvement District (PID) or other area where a local

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jurisdiction has, through a government initiative or written preference, encouraged or channeled growth, neighborhood preservation, community revitalization or redevelopment. Any of these activities must contribute to a concerted community development plan while being mindful of any concentration of poverty in a given area or neighborhood within a region.

In addition, the Department may supplement these general criteria with more specific goals in order to meet local low-income housing needs, such as:

- 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
- Care in limiting development in a neighborhood or community where concentration of affordable housing may be indicated.
- Other criteria deemed appropriate by the Department as identified in the application materials

Each of these foregoing criteria may be evaluated in the context of a given application and the financial feasibility or capability of applicant to fulfill or perform each selection criteria activity.

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 Notice of Funding Availability regarding sponsor capacity to review expectations.

Further, first time recipients of LIHTC must successfully complete a project before a second LIHTC application will be considered.

Material Participation by Nonprofit Organizations

For applicants with a general partner or managing member, co-general partner or co-managing member or other owner or manager that is a local tax-exempt nonprofit organization, the Department requires material participation by the said local tax-exempt nonprofit organization that must include, but will 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 flows 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 permanent and other debt financing, a close working relationship with the property management firm (especially in regard to 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.

- 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.

The applicant must demonstrate material participation by the nonprofit if the applicant is applying under the 10% nonprofit set aside required by IRC Section 42.

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, unless grant funding is added to tax exempt bond financing which will then translate the term of affordability to 60 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 as required by Section 42 (m)(2) 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
- Construction costs per unit
- 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. It is recommended that operating and replacement reserves be limited to 6 months of operations. It is highly recommended that at least a 7% vacancy rate be used in projections.

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. Projects with deferred payment loans, cash flow only loans or partnership loans may as requested need to provide a letter from either a Tax Accountant or Tax Attorney stating the there is a reasonable expectation the loan can be repaid at maturity or the loan or portion of the loan not repayable will be treated as a grant and removed from

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basis. Further analysis and detail of the repayment assumptions may be required by the Department at any time.

Primary Debt Service Ratio is recommended to be no lower than 1.20 (1.15 for projects using Rural Development loans) until initial stabilized occupancy and no higher than 1.35 (unless accompanied and supported with an explanation.) OHCS will consider vacancy rates, ability to raise rents and historic operating cost escalations typical in the marketplace in determining debt coverage before and after initial stabilized occupancy. Repayment of must pay debt, e.g., principal amount of deferred developer fee, may increase primary debt service ratio.

Maximum Developer Fees

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

OHCS will set the developer fee at the time of the Equity Closing based on the project's final budget after construction bids have been accepted and final sources and uses have been balanced. The fee presented in the Placed in Service documentation may not exceed the amount finalized at closing. It is expected that a project with excess funds will return those funds to one or more of the public funders involved upon Project completion.

OHCS reserves the right to adjust the amount of a tax credit award or any other funding source if there has been an increase in LIHTC pricing or cost savings between the application, partnership closing, and or project completion. At OHCS' discretion, any increase in LIHTC pricing or cost savings shall be shared 50 percent to the Applicant to be used as follows:

a) Make whole the cash developer fee determined at equity closing that may have been deferred prior to "Placed- in-Service";
b) Cover justifiable Project cost increases, including but not limited to unforeseen cost overruns, items value engineered out of the development during construction, and/or upgrades that demonstrate extended useful life; and/or
c) Reasonable increase to Project reserves.

The remaining 50 percent would be utilized to reduce the sources provided by OHCS, such as a reduction of LIHTC allocation or reduction of other sources of funds provided by OHCS to the Project at the equity closing.

For acquisition/rehabilitation projects where the cost of rehabilitation is less than 25% of the reasonable "as-is value" of the building, OHCS will only allow in eligible basis developer fees up to 10% of Total Project Costs less reserves, partnership organizational fees, broker's fees associated with selling LIHTCs, and less the requested developer fee amount. Total rehabilitation costs consist of the budget categories

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of site work, rehabilitation, contractor overhead and profit, and contingency. OHCS may require a current third-party FIRREA appraisal to establish the building's as-is value to be ordered by OHCS or third-party lender and to be paid for by Applicant.

If there is an increase in acquisition cost in a transaction between Related Parties or other parties with an Identity of Interest (a "Related Buyer and Seller"), OHCS may require a current third-party FIRREA appraisal to establish the acquisition value to be ordered by OHCS or third-party lender and to be paid for by Applicant. OHCS may limit the acquisition costs included in the Total Project Costs. If any portion of the increased acquisition cost in the transaction between a Related Buyer and Seller is accepted by OHCS, the amount of the increased acquisition price will be deducted from the lesser of the developer fees listed in the Applicant's project budget or the maximum developer fees applicable to the project. If land improvements have been completed by a Related Party or other person having an Identity of Interest to the Applicant, the work should be itemized on the project's budget and not included as an increased land cost.

For the purposes of this policy, partnership organizational fees, broker's fees associated with selling LIHTCs, Reserves, Donations and any amounts attributed to commercial areas or other non-residential areas are not considered part of the Total Costs.

OHCS' Finance Committee will make the final determination of developer fee reasonableness in the course of recommending action for the overall Project.

Deferred Developer Fees

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

a) The entire amount will be paid pursuant to the standards required by the Code to stay in basis. 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 repayment;
b) The deferred portion does not exceed fifty percent (50%), at initial tax credit application, of the total amount in the application;
c) Payment projections do not jeopardize the operation of the development;
d) Nonprofit organizations must include a resolution from their Board of Directors authorizing a deferred payment obligation from the development;
e) Applicants must include with the application a statement describing the terms of the deferred repayment obligation, including any interest rate charged and the source of repayment; and
f) OHCS will require a Note evidencing the principal amount and the terms of repayment of any deferred repayment obligation to be submitted at the time of the Placed in Service cost certification.

Maximum Consultant Fees

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Consultant fees (other than arm's length architectural, engineering, property appraisal, market study, and syndication costs) must be included in the developer fee limit set forth above.

Maximum Contractor's Profit and Overhead

When the general contractor is a Principal, Related Party or otherwise has an Indemnity of Interest with the Applicant or project owner, OHCS will limit the contractor's combined profit and overhead to 10% of total rehabilitation/construction costs plus site work costs.

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.oregon.gov/ohcs/pages/hrs_lihtc_program.aspx or can contact the Department to obtain the list.

The analyst 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.

When value is assigned to a property that includes basis producing "Improvements/buildings", a straight market value of property is not appropriate. The value must be an "as restricted" market value or a Prospective Market Value (PMV) as restricted at Stabilization scenario. Appraisal requirements must be followed as outlined in Oregon Statute, by FIRREA standards and other appraisal associations. It also must meet Department instructions for an approved market analysis.

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.

Mixed Use Project Policy

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

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

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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.

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. A replacement reserve or holdback of other funding capitalized in advance may be required.

The Department may verify if work has been performed to its satisfaction. The Department may require remediation of unsatisfactory work or conditions. 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.oregon.gov/ohcs/Pages/APMD_DivisionMain.aspx as described in the Department Notice of Funding Availability materials and attached as Exhibit D of this document.

Application And Allocation Process

All projects, including those competing for set asides and both competitive and non-competitive credit , 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 consolidated plan, if applicable or any successor document(s) to such state or local consolidated plans, other information that can demonstrate verifiable housing and community needs and priorities, as required under IRC Section 42 and any other information the Department deems pertinent to the selection process as identified in the NOFA.

To apply for LIHTC, an applicant must submit a detailed proposal to the Department on the Application form prescribed, by the deadline specified by the Department's NOFA, or RFP, FRA or other special

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application process. For projects financed with tax-exempt bonds, applications can be received at any time.

The specifics of the Application contents are available at http://www.oregon.gov/ohcs/pages/hrs_cfc_overview.aspx

You may want to contact your "regional advisor to the Department" for assistance. To find the correct person for the project, review the map and contact information for the county the project is located in. http://www.oregon.gov/ohcs/Pages/DO_RegionalAdvisors.aspx

After an Application has been submitted to the Department, all questions must be directed to Connie Lelack at the Department. You may reach her at (503) 986-0974.

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 the Department for a copy of these regulations or further technical assistance..

Application Thresholds

Applications received through the NOFA for either 9% credits or competitive 4% credits must meet the Department's threshold requirements in order to be considered further.

Administrative Thresholds

An Application must be timely, complete (i.e., the documents and information required by Section 3.1 of NOFA must be submitted), and all signatures provided. It must have be accompanied by a check for the required fees. This is Pass/Fail criteria.

Qualification Worksheet Review

The Qualification Worksheet will be reviewed to ensure that a) **the funding request does not exceed the applicable regional allocation** and b) the project meets **one of the following four** conditions:

- **A. Geographic Priority Areas** based on population need, prior funding history and affordable housing inventory.
- **B.** The Project will receive **significant public investment from local, state, or federal agencies.**
- **C.** The Project qualifies as **preservation.** A preservation project includes USDA or HUD project-based rental assistance ("PBRA") that meets the following criteria:
    - i. There is an existing PBRA contract that will be preserved.
    - ii. At least 50 percent of the units in the project are subject to the rental assistance contract.
- **D. Priority Projects:** The project demonstrates high public priority and meets multiple state agency, legislative efforts, or community or local area goals.

This is Pass/Fail criteria.

Minimum Qualification Threshold

In order to qualify for competitive scoring, all of the following minimum qualification thresholds must be met:

A. **Asset Management Compliance Review:** Applicant's current portfolio of projects monitored by Agency must be in compliance with required Program and Agency regulations.

B. **Program Compliance Review:** Applicant's new Application must be in compliance with the rules and regulations of each program funding source requested.

C. **Resident Services Review:** Applicant's proposed Resident Services Agreement must be in compliance with OHCS standards.

D. **Readiness to Proceed: A**pplication must demonstrate the project's readiness to proceed based on the following information:

1) Site control confirmed and zoning in place.
2) Approval status of Application with HUD or RD (if applicable)
3) Adequacy of development schedule

E. **Financial Feasibility:** The project will meet Agency guidelines and industry standards for the spreadsheet categories listed. Projections for the project are analyzed for committed sources and related uses of funding, operating pro forma, debt underwriting, and investment guidelines. Construction guidelines for the project must also be met.

F. **Development Team Capacity:** The team used to develop the project will be assessed in the following categories: Construction Experience, Financing Capability, Management Experience, Complete Development Team Expertise, and Portfolio/Asset Management.

Refer to Section 3.3 of the NOFA for further details.

This is Pass/Fail criteria.

In addition, each application will be checked for compliance with minimum program standards as follows:

LIHTC **Program Thresholds**

Applications under the NOFA, RFP, RFA 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 LIHTCs. Upon issuing a conditional reservation, the Department will notify the Chief Executive of the designated jurisdiction/city where the planned housing development is located.

The Department application and selection process is intended to comply 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 existing financing sources for 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 will be considered when evaluating the Application:

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- Meeting specific program criteria and thresholds.
- Minimal impact on existing residential or commercial tenants
- Reasonable request of program resources
- Eligible uses of resources
- Cost reasonableness/Cost containment
- Compatibility of the multiple funding sources work listed in the Application

Consideration will also be given to projects that propose to:

- Include energy efficient features
- Rehabilitate and help preserve a certified historic structure

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

- Ten percent (10%) federally mandated non-profit set aside
- Fifteen percent (15%) RD set aside

Competitive Evaluation

Additionally, projects will be evaluated and ranked by the Policy Review Team (PRT) on the remaining two sections of the Application:

1. The Best Use of Public Funds; and
2. The Community Project Needs.

The scoring criteria are designed to measure the nature and extent of the need in the community for the project and the benefits to the community. The PRT will rank projects within applicable state regions after evaluating each project as follows:

The Best Use of Public Funds section will be evaluated for the benefits offered by the project that are above and beyond clean, safe, affordable housing, including such benefits as services to tenants for health and well-being, family stability, crime recidivism prevention, funding leverage, independent senior living, social justice/equity and urgent community need, etc.

The Project's Community Need section will be evaluated by reviewing resources such as the county housing profile and poverty report guides, county ranking lists, affordable housing Inventory, OHCS past investment in community, and Oregon employment data and other locally available data.

The PRT will evaluate the various components of need and score them as low, moderate, strong or severe based upon indicators of need presented and the extent to which they are demonstrated to be more severe than comparable projects locally, regionally or statewide.

The evaluation criteria above are applied by the Department to each LIHTC Application. After projects in the competitive review are evaluated and ranked in order of their score, they will be presented to the Department Executive Team or Finance Committee. The Executive Team or Finance Committee will provide a recommendation to the Director for his/her decision. 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.

Initial Offer to Reserve Resources

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Those projects receiving a conditional offer to reserve LIHTC must comply with all conditions outlined in the Reservation Letter within 240 days in order to retain its LIHTC reservation commitment. LIHTC reservations offered to, but not accepted or completed (by satisfying all the conditions outlined in the offer letter) by the applicant may become available for distribution to other high-ranking applicants.

Unused Credit Authority

Reallocation: After all projects in each region are funded and funds are still available then any remaining funds will be pooled for reallocation. The remaining unfunded projects that ranked highest across all the regions will receive funding based on the same criteria listed in Tie Breaking Rules, found in Section 1.3 of the NOFA.

After the allocation/reallocation process is completed, Agency has sole discretion not to allocate the remaining funds. The Department may issue NOFA's, RFP's or other special funding processes for projects to compete for any remaining LIHTCs.

Reissuing Returned Awards: In the event any funds from this NOFA are returned or forfeited back to Agency, the award will be reissued at its sole discretion, to:

1. The project that scored the next highest in the region that the award originated.
2. The project that best utilizes the funding resources relative to the funding needs.

If no projects in the original region qualify to receive reissued/forfeited funds, then the project that ranks the highest across all regions will receive funding based on the same criteria listed in Tie Breaking Rules. Once the Department has determined the order of project rankings, such rankings will determine any LIHTC award made during that cycle of funding and until October 1 of each year if projects fail to meet conditions. After October 1, there will be no carry forward of rankings into the next funding cycle.

If needed and available, fill gaps in funding sources for previously awarded projects that have not met Carryover.

This may include, but is not limited to Carryover application requirements.

To the best of its ability, the Department will maintain the Department desired funding split between rural and urban funded projects.

The Department may issue NOFA's, RFP's or other special funding processes for projects to compete for any remaining LIHTC.

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

- The project was not funded within the previous funding cycle but received a score high enough to be considered a financially feasible/viable project.
- The project has not re-applied as a 4% non-competitive project and received a reservation of non-competitive credits
- If a funded project cannot meet Carryover requirements, or becomes ineligible for the LIHTC for any other reason, the next highest ranking and eligible project will be notified. Other Department funding sources for possible replacement projects may also be reserved based upon any availability.

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

1. Failure to close within 240 days of the award.
2. A material adverse change so that the project or applicant no longer meets the Minimum Qualification Threshold or any of the competitively scored criteria.

3. The proposed project will not be placed in service by the date mutually agreed upon.
4. Other causes at the Department's discretion.

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

1. Revoke the reservation.
2. Approve requested changes to the original application as proposed.
3. Take no action.

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 required or budget indicated in the application

3. Failed to effectively utilize previously allocated tax credits and notified of such failure to meet appropriate utilization in advance of application NOFA closing date.

4. Been found to be in non-compliance with program rules as evidenced by Department or other public or private allocating agency project monitoring and missed the cure time deadline given in writing

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

Oregon Public Records Disclosure Law

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

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- Articles of incorporation, partnership agreements and operating agreements
- Commitment letters
- Project proformas 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 Internal Revenue Code 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 LIHTC projects only)
- No earlier than 30 days prior to issuance of IRS Form 8609

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

1. Total project costs
2. Construction costs per square foot for affordable housing project.
3. 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 the amount of proceeds anticipated from the sale of LIHTCs. 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 LIHTC proceeds are determined, there may be an adjustment to the LIHTC reserved or committed. The LIHTCs will not be increased beyond the amount originally reserved unless a request for an Application amendment is submitted and the request meets the requirements for Applications by sponsors who request additional LIHTCs after

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the 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 LIHTC allocation.

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.

4. Percentage of the housing credit dollar amount used for hard costs (actual construction costs, including builder and contractor's fees)
5. Projected operating income and expense, 30-year cash flow and tax benefits
6. 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
7. Debt service coverage ratio (At least 1.20 with a maximum of 1.35 unless required for financial feasibility and required in writing by the permanent lender)
8. 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 may 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. Short term removal of any reserves before 5 years of projects' existence is not recommended. However, the Department will not unreasonably withhold funds for justified project expenses or uses. One third of all released reserves in the first 10 years may be required to be returned to the Department to partially or fully repay any grants funds given to such project.

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 a material increase in LIHTC in pricing subsequent to a reservation tax credits, 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.

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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

Revocations

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 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

Reductions

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 certified eligible basis
- The Tax credit rate has changed since the original application and the rate was not locked at the Reservation and Extended Use Agreement or the time window ending with allocations ending December 31, 2013 and placed in service by December 31, 2015 has elapsed for the 9 % rate to be provided based upon the allocation date of the project

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 for an award of funding required by the Department. A signed and returned copy as an acknowledgement/agreement to such conditions shall be returned to the Department.
4) Reservation and Extended Use and Hold Harmless Agreements. If not previously filled out, an 8821 will be completed at this time. If a letter from the accountant or tax attorney is needed, it will be completed at this time.
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/recorded Declaration of Land Use Restrictive Covenants will be required prior to the release of the IRS Form 8609 by the Department
9) All applicants to the State of Oregon must provide with their applications a signed IRS Form 8821. The Form is found in the LIHTC application materials.

Reservation Period for Competitive 9% Credits

Project sponsors who receive a reservation will have a maximum timeframe (as identified and outlined in the current NOFA process, or the 240-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 NOFA 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 projects will convert to an award upon completion of the 240 day conditions until funds are depleted in the given region or funds set aside for the project type are depleted. The progress reports are required to report on critical events and timelines such as site acquisition, meeting or failing to meet the 10%

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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~~ 1 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 NOFA 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 NOFA. A project with a multiple year allocation of credits will not require a NOFA 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

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amount of equity generated by the increase in credits (see NOFA 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 through a future NOFA 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 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.

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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), rounded UP to the nearest $100,000 in annual allocation.
- For the Central and Eastern regions of the state (that may not have a full projects' worth of allocation for the first or second project), an additional $450,000 may be awarded from the yearly allocation for an award statewide of up to $8,900,000 in total annual allocation. If not needed for smaller percentage regions in the state, it will revert to future funding cycles for an award.
- 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

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credit cap per project,. For example, the application cap for the 2013 credit year was $870,000 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 $1,087,500 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. Such projects must still pass the 50% test to receive a full allocation of 4% tax credits.
- Tax credit offers of reservation or Carryover may not be transferred to other Ownership entities for the general or managing member 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/scoring 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 credits allocated.

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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.

Participatory Requirements

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

Application for Tax Credit Final 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.

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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: Multifamily Housing and Resources Section
Tax Credit Programs Manager
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.

As the Housing Credit Agency for the state of Oregon, OHCS is responsible for taking and verifying LIHTC applications from developers, as well as monitoring health and safety violations and tenant qualifications, while the IRS is responsible for administering the program nationwide. The IRS is the only agency that can revoke or adjust the amount of LIHTC allocated to a given project. The IRS through the

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audit process disallows credits, which were not properly used to build affordable housing. Since disallowed credits cannot be re-used, OHCS has an interest in ensuring the proper usage of credits to increase the supply of affordable housing. Although the IRS and OHCS share responsibility for the Credit program in Oregon, tax payer information cannot be disclosed to OHCS unless authorized by the taxpayer on IRS Form 8821, Tax Information Authorization.

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.

Policy on Exceptions/Waiver Requests

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

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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 NOFA 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. At the request of the Department, and the Oregon State Treasury (OST), 4 % applications where the Department is not issuing bonds will require an application for the credits at least 45-60 days prior to Private Activity Bond Committee approval. If requested, an appraisal may also be needed as requested by OST.

In specific situations where the use of such short term volume cap tax exempt financing can provide a demonstrated benefit that furthers affordability, the Department is willing to make an exception to not allowing a burn of the short term volume cap for the project 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 NOFA, 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.

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- 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 and regulatory/loan documents. 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 and may be found at: http://www.oregon.gov/ohcs/Pages/APMD_DivisionMain.aspx.

The Compliance Monitoring Process is based upon the following components:

- IRC Section 42 and promulgated regulations Oregon Administrative Rules for LIHTC Programs
- Qualified Allocation Plan for projects with Building Identification Numbers (BIN) beginning with OR90
- The Compliance Manual
- Each low-income unit in the project is rent restricted.
- Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project. Additionally, all low income units have been continually occupied, vacant but rent ready, or vacant for redecorating and/or minor repairs for a period of less than 30 days, throughout the reporting period
- No tenants have been evicted for other than good cause.
- A Declaration of Land Use Restrictive Covenants is in effect for all projects.

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

COMPLIANCE STATUS TRACKING

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

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

NON-COMPLIANCE REQUIRING ADDITIONAL OHCS STAFF TIME

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

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

- Audited annual financial statements for each project
- Annual project operating statements showing actual income and expenses as they relate to the real property
- Documentation that all state requirements are being met

Management Agent Plans and Qualifications

The Department will review all changes in Management Agent. Department policy requires 60 days prior to any change. The owner must submit the proposed new agent plan and qualifications to Asset Management. Asset Management Section will review the materials and approve or disapprove the proposed agent. Any exceptions to this policy will be made at the discretion of the Department.

ANNUAL OWNER CERTIFICATION REPORTING

Annual certification of continuing compliance is due April 15th of each year.

- Monitoring of a project will occur as follows:
- An on-site inspection of all buildings in a project will occur by the end of the second year following the date the last building is placed in service. This review will include a physical inspection and a review of the low-income certification and documents supporting the certification for at least 20% of the tenants,

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- Subsequently, at least once every three years, the Department will conduct an on-site inspection of each building exterior and all common areas in a project and will review tenant files and complete a physical inspection of at least 20% of the project's low-income units.
- When a project is scheduled for review, the Department will:
- Perform the on-site file, property and unit inspections; Files may be audited electronically.
- Inform the owner as soon as possible of any finding of noncompliance with regard to such review.
- **Liability:** Compliance with the requirements of Section 42 and state regulation is the responsibility of the owner. The Department is not liable for an owner's non-compliance.
- Correction of Non-Compliance Conditions: The Department will provide written notice of non-compliance to the owner if:
- Annual Certification Report with attachments is not received by the due date.
- The project is found to be out of compliance, through inspection, review or other means, with the provisions of Section 42 or state regulations. The owner will have 30 days from the date of notice to supply any missing information for the Annual Certification Report. The owner will have 30 days from the date of notice to correct any non-compliance issues. The Department may grant an extension of up to 90 days if good cause is demonstrated as determined by the Department. At the end of the allowable correction period, the Department is required to file Internal Revenue Service Form 8823, "Low Income Housing Credit Agencies Report of Noncompliance," with the IRS. All non-compliance issues must be reported whether corrected or not. The Department will explain the nature of the non-compliance or failure to certify and state whether the non-compliance has been corrected. The IRS will make any determinations as to the applicability of recapture penalties, not the Department.

THE DEPARTMENT REQUIRES ALL APPLICANTS FOR LIHTC ACQUISITION AND REHABILITATION CREDITS TO COMPLETE A THOROUGH REHABILITATION ASSESSMENT BY AN APPROVED THIRD PARTY UNLESS AN EXCEPTION IS PROVIDED BY OHCS. ALL PROJECTS ARE SUBJECT TO INSPECTION, BY OHCS AND/OR AN OHCS APPROVED THIRD PARTY REPRESENTATIVE(S), TO MAKE CERTAIN WORK HAS BEEN PERFORMED TO THE DEPARTMENT'S SATISFACTION. ARCHITECTURAL STANDARDS ARE INCLUDED IN THE NOFA AND/OR THE MULTI-FAMILY RENTAL HOUSING RISK SHARING AND ELDERLY AND DISABLED PROGRAM APPLICATIONS AND/OR ANY ADDITIONAL PROGRAM MATERIALS ADOPTED OR USED BY THE DEPARTMENT.

ACQUISITION/REHABILITATION TENANT CERTIFICATION POLICY.

Projects that receive an allocation of credits for both acquisition and rehabilitation will not be required by the Department to complete tenant certifications for both sets of credits for the same households. Ownership may ***choose*** to complete a rehab certification as well.

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

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RELOCATION/DISPLACEMENT POLICY

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

- Provide a complete survey of existing tenants using the format provided by OHCS. This survey must include third party income verification and be completed and approved by the department prior to the close of project financing.
- For project receiving federal funds, the Uniform Relocation Act (URA) may apply. The URA requirements will supersede the above.
- Discuss with your loan officer if the project will be overlaying LIHTC onto an existing project that is in the extended use period. Relocation for tenants in place at time of transfer of property to a new owner will differ in procedure.

HOUSING CREDIT PROPERTIES AFTER YEAR 15

The federal low-income housing tax credit ("Housing Credit") was created by Congress in 1986 and is administered in Oregon by Oregon Housing & Community Services (OHCS).

Properties that were awarded Housing Credits on or after January 1, 1990 must comply with restrictions as embodied in the recorded Reservation and Extended Use Agreement (EUA) and the Declaration of Land Use and Restrictive Covenants (Declaration).
After the initial 15-year Low-Income Housing Tax Credit (LIHTC) Compliance Period has expired for these allocations, the Internal Revenue Service (IRS) no longer receives notification of noncompliance. Consequently, the onus for dealing with noncompliance during the remainder of the affordability period rests with the state-allocating agency .

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