

NEBRASKA INVESTMENT FINANCE AUTHORITY  
LOW INCOME HOUSING TAX CREDIT PROGRAM

2018 LIHTC ALLOCATION PLAN

FOR  
4% LIHTCS



# LOW INCOME HOUSING TAX CREDIT PROGRAM

## 2018 LIHTC Allocation Plan For 4% LIHTCS

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**NEBRASKA INVESTMENT FINANCE AUTHORITY**  
**2018 LIHTC ALLOCATION PLAN**  
FOR  
**4% LIHTCS**

**1. INTRODUCTION.**

The 2018 Low Income Housing Tax Credit (“LIHTC”) Allocation Plan for 4% LIHTC, as part of the Qualified Allocation Plan (“QAP”) described below, provides for the allocation of the federal 4% low income housing tax credit issued in connection with the issuance of qualifying tax-exempt bonds. The allocation of the 9% federal low income housing tax credit is governed by a separate 2018 LIHTC Allocation Plan for 9% LIHTCs adopted by NIFA.

**1.1 AVAILABLE 4% LOW INCOME HOUSING TAX CREDITS.**

Owner/developers must seek and receive an allocation of private activity volume cap through the volume cap allocation process administered by NIFA. See [www.NIFA.org](http://www.NIFA.org) with respect to the forms and procedures for requesting private activity volume cap.

**1.2 DEVELOPMENT OF QUALIFIED ALLOCATION PLAN.**

The 2018 QAP is adopted by NIFA pursuant to a public process established by NIFA and involves input from a number of parties. The 2018 QAP consists of the following:

- a. the 2018 LIHTC Allocation Plan for 9% LIHTCs and AHTCs
- b. this 2018 4% LIHTC Allocation Plan
- c. the 2018 LIHTC, HOME and National Housing Trust Funds Application
- d. the 2018 LIHTC, HOME and National Housing Trust Funds Exhibit Examples
- e. the LIHTC Forms and Documents
- f. the CRANE Guidelines and Application
- g. the Carryover Allocation Procedures Manual
- h. the 10% Test Certification
- i. the Cost Certification Procedures Manual
- j. the Land Use Restriction Agreement (LURA)
- k. the LIHTC CROWN Land Use Restriction Agreement (CROWN LURA)

A public hearing on the proposed 2018 QAP was held in Lincoln, Nebraska. All comments received by NIFA were taken into consideration in developing and drafting the 2018 QAP.

The 2018 QAP was approved by the NIFA Board of Directors and forwarded to the Governor of the State of Nebraska for approval in accordance with the Section 42 of the Internal Revenue Code of 1986 (the “Code”). The 2018 QAP is designed to provide for the selection of developments that address the most pressing housing needs of Nebraska, within the guidelines and requirements of Section 42 of the Code. NIFA, in its sole discretion, reserves the right to modify or waive any conditions, which are otherwise not mandated by the Code, contained in the 2018 QAP. Modifications by NIFA may include, but are not limited to, changes which provide for better coordination with other state and federal programs and/or funding sources.

The 2018 QAP may be amended from time to time as new guidelines and regulations are issued under Section 42 of the Code or as NIFA deems necessary to meet the LIHTC Program goals and objectives.

### **1.3 PRE-APPLICATION LIHTC APPLICATION.**

Persons interested in applying for an allocation of 4% LIHTCs must complete the 2018 4% LIHTC/Bonds Pre-Application (The “Pre-Application”) and the 2018 LIHTC, AHTC, HOME and National Housing Trust Funds Application online (the “LIHTC Application”). The Pre-Application and the online LIHTC Application are available at NIFA’s Internet Web site ([www.NIFA.org](http://www.NIFA.org)).

### **1.4 INELIGIBLE APPLICANTS.**

Neither a pre-Application nor a LIHTC Application will be considered or reviewed by NIFA:

- i. if the developer or owner is delinquent on Nebraska LIHTC fees or Tax-Exempt Bond fees due and payable for other Nebraska LIHTC developments; or
- ii. if during the previous three (3) calendar years, there are or have been items of noncompliance or violations of a Land Use Restriction Agreement/Tax-Exempt Bond Regulatory Agreement that have not been corrected within the applicable correction period on any other Nebraska LIHTC development; or
- iii. if the developer or owner is delinquent on any documentation/fees or payment of TCAP Loan that are due and payable to NIFA, including but not limited to the following:
  - (a) Conditional Reservation Documentation/42(m) Letter
  - (b) Carryover Documentation
  - (c) 10% Test Documentation
  - (d) Cost Certification Documentation
  - (e) Asset Management Documentation
  - (f) TCAP Loan Repayment Amounts
  - (g) Any other documentation requested by NIFA

## **2. BOND & LIHTC FEE SCHEDULE.**

**NIFA reserves the right to revise the fee schedule from time to time.**

The following sets forth the various fees to be paid by the owner/developer of the project in connection with the allocation of the 4% LIHTC’s to include the issuance of bonds (whether the bonds are issued by NIFA or another issuer).

### **2.1 BOND APPLICATION/ISSUANCE FEE.**

If NIFA will be requested to issue the bonds, a non-refundable fee of 1/16<sup>th</sup> of 1% of the bond amount requested (\$1,000 minimum) is due upon application submission. This fee will be applied to the “Bond Issuance Fee” if the bond issue closes.

## **2.2 BOND ALLOCATION FEE (VOLUME CAP) AND RESERVATION DEPOSIT.**

**Bond Allocation Fee:** A non-refundable fee of \$150 is due at the time of the private activity volume cap allocation request.

**Reservation Deposit:** A reservation deposit is equal to the lesser of \$10,000 or 1% of the amount of the Allocation amount requested (minimum Deposit of \$1,000). In the event an Allocation granted to the Applicant by NIFA is not used prior to the expiration date of the Allocation (or the amount of the Allocation used by the Applicant is less than the amount of the Allocation granted by NIFA), the Reservation Deposit (or if the Allocation used is less than the Allocation amount granted, a proportionate amount of the Reservation Deposit) will be forfeited by the Applicant and retained by NIFA. **In the event, the Reservation Deposit is refundable only to the extent and in the proportion that the Allocation is used prior to the expiration date of the Allocation and upon receipt by NIFA of the IRS Form 8038 as filed with the IRS.** (Unpaid expenses incurred may be offset by NIFA against any refundable portion of the Reservation Deposit.)

## **2.3 BOND ISSUANCE FEE (AT CLOSING).**

If NIFA is the issuer of the bonds, a one-time fee of 1/8<sup>th</sup> of 1% of the bond amount (\$1,000 minimum) is due upon issuance of the bonds, less credit for the amount paid as a Bond Application Fee (Section 2.1). The project owner/developer is responsible for paying all other costs.

## **2.4 BOND ANNUAL ISSUER COMPLIANCE FEE.**

If NIFA is the issuer of the bonds, an annual fee of 1/8 of 1% of the original principal bond amount of the bonds, payable until the expiration of the qualified project period for the bonds.

## **2.5 BOND LOAN DOCUMENT/REGULATORY AGREEMENT/ASSUMPTION/ TRANSFER FEE.**

If NIFA is the issuer of the bonds, a fee of 1/8<sup>th</sup> of 1% of the original bond balance (\$1,000 minimum). The project owner/developer is responsible for paying all other costs.

## **2.6 BOND MODIFICATION FEE.**

If NIFA is the issuer of the bonds, a fee of 1/8<sup>th</sup> of 1% of the original bond balance (\$1,000 minimum).

## **2.7 BOND REFUNDING FEE.**

If NIFA is the issuer of the bonds, a fee of 1/8<sup>th</sup> of 1% of the original bond balance (\$1,000 minimum).

## **2.8 LIHTC APPLICATION FEES.**

A non-refundable fee equal to the greater of 1% of the annual LIHTCs requested or \$500 is due at time of submission of the LIHTC Application.

## **2.9 LIHTC 42(m) LETTER FEE.**

A non-refundable fee equal to the greater of 2% of the annual LIHTC stated in the 42(m) Letter or \$500 is due to NIFA no later than the date specified for the submission of the 42(m) Letter Documentation.

## **2.10 LIHTC LATE FEE – 42(m) LETTER DOCUMENTATION.**

A late fee of 1% of the LIHTC 42(m) Letter amount will be assessed and collected from developers/owners of developments for which the 42(m) Letter Documentation as set forth below in Section 4 is not received in NIFA's office by the required deadline.

## **2.11 LIHTC ALLOCATION/COST CERTIFICATION FEE.**

A non-refundable fee equal to 2% of the annual amount of the LIHTC allocated to each development is due and payable to NIFA by the developer/owner at the time of submission of the Final Cost Certification Documentation as set forth in the Final Cost Certification Procedures Manual.

## **2.12 LIHTC LATE FEE – COST CERTIFICATION.**

A late fee of 1% of the LIHTC amount reserved for a development will be assessed and collected from developers/owners of developments for which the Cost Certification Documentation is not received in NIFA's office by the required deadline as set forth in the Cost Certification Procedures Manual.

## **2.13 LIHTC EXTENSION FEE.**

A developer/owner may request an extension of any of the following deadlines: 42(m) Letter and Final Cost Certification, if

- (a) an Extension Fee of \$500 is received in NIFA's office on or before the applicable deadline; and
- (b) in NIFA's sole discretion, the following conditions have been satisfied.
  1. A written explanation of the conditions that exist which have caused the need for the extension, along with the proposed date that information will be submitted to NIFA to meet the extended deadline.
  2. Based on the facts and circumstances, the request for an extension is reasonable.
  3. The request for an extension is submitted to NIFA on or before the deadline for the original submittal.
  4. The Extension Fee is paid concurrently with the extension request.

## **2.14 LIHTC ANNUAL COMPLIANCE FEE.**

A non-refundable fee equal to the greater of 2% of the annual LIHTC allocated or \$500 minimum is due to NIFA each year during the 15-year Compliance Period for the development.

Owners have the option to pay the LIHTC Annual Fee upfront as part of their development budget. If an owner chooses to pay the LIHTC Annual Fee in full, the amount due for the Annual Fee will be discounted to 1.5% of the annual LIHTCs allocated multiplied by 15 years with a minimum fee of \$7,500.

Example: Annual Credit Amount x 1.5% x 15 years = Total Upfront Annual Fee for first 15 years.

If an owner elects to pay the full 15 years of the Annual Fee upfront, this should be reflected in the Development Budget within the LIHTC Application.

After the 15-year Compliance Period (e.g. during the Extended Use Period), the LIHTC Annual Fee will be payable in the amount and as set forth in the Post Year-15 Monitoring Procedures.

## **2.15 LIHTC LATE PAYMENT PENALTY.**

A late payment penalty equal to 5% of the LIHTC Annual Fee will be charged to all accounts that are more than 30 days delinquent. Any fees not collected will be turned over to legal counsel for collection.

## **2.16 LIHTC TRANSFER/ASSUMPTION FEE.**

A nonrefundable fee of \$1,500, plus attorney fees shall be assessed for changes in the ownership structure of the development or a transfer of the Project to another entity.

NIFA reserves, commits and allocates LIHTCs to partnerships, corporations, limited liability companies and individuals. Reservations and commitments of LIHTCs are non-transferable, and **any change in the partners/members of the development owner or sale of the development requires NIFA's prior written approval and payment of the fee described in this Section 2.16** (e.g., addition of a third party or removal of an individual/entity listed as part of the ownership entity of the development in the LIHTC Application).

## **2.17 LIHTC APPLICATION OR DOCUMENTATION CHANGE FEE.**

A non-refundable fee of \$100 an hour after the first hour of review, plus attorney fees, shall be assessed in connection with a request to amend the terms, conditions or information included in the application or other documentation submitted in connection with the request for LIHTCs. Such non-refundable fees shall be submitted to NIFA at the time of request for consideration of an application or documentation change.

Reservations and commitments of LIHTCs are non-transferable, and any change from the commitments in the application requires NIFA's prior written approval and payment of the fee



described in this Section 2.17 (e.g., request for changes to commitments made in the LIHTC Application).

**2.18 LEGAL FEES.**

Extraordinary legal fees incurred by NIFA in connection with the review of the LIHTC Application or any materials submitted in connection with the allocation, the allocation process or ongoing compliance with respect to a development will be assessed and charged to the development owner, including but not limited to the following:

- Fees for research relating to irregular situations
- Ownership agreements
- Rental rate questions
- Unusual timing situations
- Specific technical questions related to Code Section 42

**3. LIHTC ALLOCATION, APPLICATION & PRIVATE ACTIVITY VOLUME CAP.**

**3.1 LIHTC ALLOCATION CYCLES.**

Allocation Cycles. NIFA expects to hold at least five (5) Allocation cycles in connection with the allocation of the 4% LIHTC. For a development to be eligible for review during an Allocation cycle, a complete LIHTC Application and all required supporting information must be submitted to NIFA via the online funding application system by the deadline for that particular Allocation cycle. Submissions for an allocation of 4% LIHTCs that do not include a fully completed LIHTC Application, with correctly attached Exhibits and specified application fee, will not be reviewed or scored by NIFA. The LIHTC Application is available on NIFA’s web site at [www.NIFA.org](http://www.NIFA.org).

NIFA expects to hold the following Allocation cycles in connection with the 4% LIHTC:

<b>2018</b>	<b>Application Deadline (no later than 5:00 p.m. CST)</b>	<b>4% LIHTC 42(m) Letter Issued</b>	<b>Approximate 4% LIHTCs to be Reserved*</b>
<b>4% LIHTC Cycle 1 Cycle 2 Cycle 3 Cycle 4 Cycle 5 Additional Cycles*</b>	<b>January 19, 2018 March 16, 2018 May 18, 2018 July 20, 2018 September 21, 2018</b>	<b>To be determined</b>	<b>To be determined</b>

\*NIFA reserves the right to hold additional Allocation Cycles or make changes to the above Allocation Cycles as it deems necessary to meet 2018 LIHTC Program goals and objectives.

### **3.2 SCORING OF LIHTC APPLICATION.**

The following criteria will be reviewed for purposes of scoring each LIHTC Application:

- Threshold Criteria
- Other Selection Criteria
- NIFA Scored Criteria

**NOTE:** LIHTC Applications for LIHTCs will be scored SOLELY on information provided in the online funding LIHTC Application submitted for the applicable Allocation Cycle deadlines. An LIHTC Application submitted for review must be resubmitted in full (whether or not changes have been made by the applicant subsequent to this review) by the next Application deadline in order to be considered for an allocation of LIHTCs. (Any documentation or information submitted for a previous deadline will not be taken into consideration for the current deadline.)

### **3.3 LIHTC FULL APPLICATION SUBMISSION.**

To be considered for a reservation of LIHTCs, all documentation must be submitted through the online funding application. Only the information submitted for the current cycle will be reviewed regardless of any prior cycle's submittal of documentation. If information was submitted by January 31, 2018, information must be resubmitted in full for each cycle after January 31, 2018, until the application has received an award. The LIHTC Application Fee must be submitted on or prior to the submittal of the online Application and the applicant, developer and owner (or related parties) must be current on any fees owed to NIFA for existing or previous developments. Threshold criteria requirements are outlined in the LIHTC Application.

### **3.4 EVALUATION OF FULL LIHTC APPLICATION.**

- (a) Each application for LIHTCs for a particular development will be evaluated based upon the information submitted in the online LIHTC Application for the applicable cycle in which it was submitted and such other information that NIFA may request or obtain in the evaluation process.
- (b) NIFA will conduct an initial evaluation to determine the appropriate amount, if any of LIHTCS to be reserved, using data provided by the eligible applicant and according to NIFA benchmarks and Section 42 of the Code.

**NOTE:** NIFA will only review materials submitted during the applicable cycle in which it was submitted.

### **3.5 MAXIMUM ALLOCATION OF LIHTCS.**

- (a) In accordance with Section 42 of the Code, each LIHTC Application will be evaluated by NIFA to determine the amount of 4% LIHTCs to be allocated for a particular development. LIHTC allocations will be limited to the amount necessary to ensure the financial feasibility of the development based on the pro-forma information submitted by the developer and such other materials as requested and deemed necessary by NIFA.

- (b) For purposes of determining the amount, if any, of 4% LIHTCs to be reserved for a particular development, NIFA will limit the amount of developer/contractor overhead, profit and fees, general requirements, and consultant fees included in the eligible basis to an amount not to exceed 24% of the total eligible basis of the development. In addition, any fees calculated on eligible basis (before any basis boost) above \$125 per square foot for new construction and rehabilitation will not be included in the allowable eligible basis amount for purposes of a reservation of LIHTCs.

Example:

- Total Eligible Basis
- (Builder/Contractor Overhead)
- (Builder/Contractor Profit)
- (General Requirements)
- (Developer Overhead)
- (Developer Fee)
- (Tax Credit Consultant Fee)
- (Real Estate Consultant Fee)
- = Adjusted Eligible Basis (Limited to \$125 per residential living square foot (residential living space does not include the following: garages, storage areas (as described in the Amenities Section of the application. If selecting to provide a storm shelter that also will serve as a bathroom or bedroom closet, the architect must certify that such space qualifies as a storm shelter. If such space qualifies as a storm shelter the square footage can be included in the residential living square footage of the units.), unfinished basement, storm shelters, common area, or other areas that otherwise received points in the LIHTC Application) for new construction and rehabilitation)
- X 24%
- = Maximum amount allowable for developer, contractor overhead & profit, general requirements & consultant fees includable in eligible basis for LIHTC 42(m) Letter purposes

Applicants should be aware that NIFA may reduce the LIHTC allocation to achieve the range of 24% or the per square footage limits for these fees.

- (c) For purposes of determining the amount of 4% LIHTCs allocable to a development, NIFA will limit the amount of architecture design/architect supervision/ engineering/survey fees to an amount not to exceed 7% of new and/or rehabilitation of hard construction costs (not to include contractor overhead/profit or general requirements).

### 3.6 DEVELOPER FEE/ACQUISITION OF EXISTING BUILDING.

A developer fee is permitted in an amount related to the acquisition cost of an existing building that will also be rehabilitated. Such developer fee will be limited to 5% of the building acquisition costs excluding the cost of land and fees associated with the purchase or lease of the land. Acquisition cost of the existing building(s) must be supported by an appraisal from an unrelated third party and a settlement statement.

### **3.7 PRIVATE ACTIVITY VOLUME CAP APPLICATION.**

To be considered for a private activity volume cap bond allocation and 4% LIHTC, an applicant must submit a complete LIHTC Application and all supporting information which will be scored pursuant to Section 3.2. Developments for which private activity volume cap is requested for the issuance of tax-exempt bonds must qualify for and use 4% LIHTCs. Additionally, at least 50% of the aggregate basis of the development (including the land) must be financed with the proceeds of the tax-exempt bonds.

Developments financed with tax-exempt bonds pursuant to Section 142 of the Code and with respect to which private activity volume cap is allocated in accordance with Section 146 of the Code are eligible to receive 4% LIHTC based on the amount of the qualified basis of the Project (as set forth in Section 42 of the Code). 4% LIHTC do not count against, and are not required to be allocated from, Nebraska's 9% LIHTC credit ceiling.

### **3.8 NIFA AS ISSUER OF TAX-EXEMPT BONDS.**

Applicants desiring that NIFA act as the issuer of the tax-exempt bonds shall submit the completed Pre-Application (along with applicable fees) in order for the NIFA board to consider the adoption of a limited purpose intent resolution. A limited purpose intent resolution does not bind NIFA to ultimately issuing bonds, but is a requirement prior to the consideration by the NIFA board of an allocation of private activity bond cap and final bond approval. Once the NIFA board has issued a limited purpose intent resolution, the applicant must submit a completed LIHTC Application. A separate application for the bond allocation (NIFA's Unified Volume Cap Allocation Application) must then be submitted after a completed LIHTC Application has been reviewed and accepted with no deficiencies, along with the applicable Reservation Deposit and Bond Allocation Fee.

### **3.9 NON-NIFA ISSUER OF TAX-EXEMPT BONDS.**

If NIFA will not be the issuer of the bonds, the applicant must submit a completed Pre-Application and include a copy of the intent resolution adopted by the proposed issuer (e.g. governmental entity) of the bonds. Once the Pre-Application has been submitted and reviewed, the applicant may submit the completed LIHTC Application. A separate application for bond allocation (NIFA's Unified Volume Cap Allocation Application) must then be submitted after a completed LIHTC Application has been reviewed and accepted with no deficiencies, along with the applicable Reservation Deposit and Bond Allocation Fee.

## **4. LIHTC 42(m) LETTER.**

Applicant requesting to receive an allocation of 4% LIHTC in a particular Allocation cycle of LIHTC will be notified in writing and will receive a 42(m) Letter of LIHTCs subject to the conditions set forth in the Conditional Reservation.

Within 90 days of notification of a 42(m) Letter, the applicant must submit to NIFA documentation of the following:

- (a) Payment of 42(m) Letter Fee and any other fees due to NIFA (including fees due for all other developments sponsored by such applicant).

- (b) A Phase I Environmental Site Assessment prepared by an unrelated third party professional. For developments for which rehabilitation will be performed, such report must include an assessment of the risks relating to environmental conditions including but not limited to lead-based paint, asbestos and radon.
- (c) Each development owner must agree to provide complete annual operating data and federal income tax returns to NIFA on a timely basis.
- (d) A Fair Housing Certification in the form attached hereto as Exhibit A signed by the development's architect evidencing that, when constructed in accordance with the plans and specifications, the development will be in compliance with the design and construction requirements set forth in the Fair Housing Act and Americans with Disabilities Act.
- (e) Development status reports, in form and frequency as specified by NIFA, outlining the progress toward completion of the development. The Quarterly Progress Report attached hereto as Exhibit B shall be used to submit such reports to NIFA by the 5<sup>th</sup> day following the end of each calendar quarter. Information requested by NIFA may include such items as zoning approvals, construction progress reports, site control documentation and cost analysis updates.
- (f) If the owner of the development intends to claim Historic Rehabilitation Tax Credits, NIFA will require evidence from the State Historic Preservation Office (SHPO) of the United States Department of the Interior National Park Service Part I approval of the historic rehabilitation of the development, if not previously submitted with the LIHTC Application.
- (g) Each development owner must certify that the development will be in compliance with the Violence Against Women's Act, to include ensuring prospective applicants and tenants are provided with the Notice of Occupancy Rights Under the Violence Against Women Act.
- (h) Any other documentation required by NIFA.
- (i) Election of Applicable Percentage.
- (j) Designation of Placed-In Service Date as effective date of Gross Rent.

**NOTE:** Failure to submit the above requirements, and/or other conditions imposed by NIFA, by the required deadline, will result in late fees and could result in the revocation of the development's 42(m) Letter of LIHTCs. Extensions may be requested as set forth in Section 2.14.

## **5. LIHTC REVOCATION.**

NIFA may revoke 42(m) Letter LIHTC allocation made to a developer/owner for any development. Revocation may occur at NIFA's sole discretion due to actions taken by the development's owner without NIFA's prior written approval, from the time of 42(m) Letter is issued and up to the placed-in-service date of the development, for any of the following reasons:

- (a) Site change;
- (b) Change in ownership—a change in the parties involved in the ownership entity (e.g., addition of a third party or removal of an individual/entity listed as part of the development ownership submitted in the LIHTC Application);
- (c) Change in unit design, square footage, unit mix, number of units, number of residential buildings, etc.;
- (d) Instances of curable non-compliance issues beyond the specified cure period on an applicant’s existing LIHTC developments in any state; or
- (e) Change in rents to be charged to tenants.

**6. MODIFICATION OR REVOCATION OF LIHTC ALLOCATION.**

NIFA may modify or revoke a LIHTC 42(m) Letter to the developer/owner of the development for any of the following reasons:

- (a) Information submitted to NIFA is determined to be false or fraudulent;
- (b) Failure to meet conditions set forth in the Conditional Reservation;
- (c) Material changes occur in the actual costs and/or square footage of the development without the prior written approval of NIFA;
- (d) Owner receives additional subsidies or financing for the development other than those disclosed in the LIHTC Application without the prior written approval of NIFA;
- (e) Subsequent regulations are issued by Department of the Treasury or the IRS pertaining to Section 42 of the Code; or
- (f) Applicant fails to promptly notify NIFA of any material or adverse changes from either the original LIHTC Application.

**7. FINAL LIHTC ALLOCATION/COST CERTIFICATION.**

No 4% LIHTC allocation will be made until the development has been placed-in-service and the developer/owner has submitted to NIFA the Final Cost Certification Documentation, as set forth in the Cost Certification Procedures Manual. Final 4% LIHTC allocations may be requested as soon as an eligible building has been placed in service. NIFA requires the submission of the Final Cost Certification Documentation by the deadlines set forth in the Final Cost Certification Procedures Manual. The 4% LIHTC amount allocated for a development will be based on NIFA’s final determination of the qualified basis for the building(s) or development and a review of the development’s costs.

**NOTE:** Failure to submit the Final Cost Certification Documentation by the required deadlines as set forth in the Final Cost Certification Procedures Manual will

result in late fees and could result in the revocation of the LIHTC allocation. Extensions may be requested as set forth in Section 2.14.

## **8. LIHTC GUIDELINES.**

Following are general guidelines of the LIHTC Program and other set-asides. These guidelines are not conclusive and should not be relied upon as tax advice. NIFA suggests that, prior to completing the LIHTC Application; you consult with an independent, third-party certified public accountant or attorney for a complete interpretation of Section 42 and other related tax laws in the Code. NIFA's review of documents submitted in connection with a LIHTC Application is solely for its own purposes. NIFA makes no representations to the development's Owner or anyone else as to:

- (a) compliance with the Code, Treasury Regulations or any other laws or regulations governing LIHTC; or
- (b) the financial feasibility or viability of any development.

No member, officer, agent or employee of NIFA will be personally liable concerning any matters arising out of, or in relation to, the allocation of LIHTCs. LIHTC's will be awarded based on federal tax law and Nebraska's QAP. NIFA reserves, commits and allocates LIHTCs to partnerships, corporations, limited liability companies. LIHTC commitments, reservations and allocations are not transferable, and any change in development ownership requires NIFA's prior written approval. NIFA verifies development ownership through organizational documents, closing documents, warranty deeds and title reports.

NIFA reserves the right to not allocate 4% LIHTCs to any development, regardless of ranking/scoring, if NIFA determines in its sole discretion that the development does not further the purpose and goals of the LIHTC Program. For purposes of this determination, the information taken into account may include, but is not limited to, the applicant/sponsor's experience and performance and the applicant/sponsor's prior participation in the NIFA program and other states' LIHTC programs. The prior performance considered may include, but is not limited to, progress achieved with previous Conditional Reservations, 42(m) Letter, Carryover Allocations, Cost Certifications, development compliance and payment of fees due to NIFA.

NIFA reserves the right to not allocate 4% LIHTCs to any development, regardless of ranking/scoring, if NIFA determines in its sole discretion that a disproportionate number of LIHTC developments have been developed in a particular census tract within the past three-year period. NIFA may decide to allocate LIHTC to a development in another county to best serve the citizens of Nebraska. This right will be exercised only in limited circumstances, such as when LIHTC developments in a particular census tract have a vacancy rate of 7% or more, or if, when taking into account current LIHTC Applications and existing LIHTC developments and others previously approved and funded (but not yet constructed or occupied), LIHTC developments would create a disproportional number of low-income housing units in that particular area.

NIFA recognizes that certain developments may need additional subsidies to encourage the production of and ensure the viability of low-income housing developments. Under certain circumstances (particularly for smaller developments in rural areas), NIFA may agree to provide

limited second mortgage financing to enable such developments to take advantages of LIHTC available in connection with the issuance by NIFA of tax-exempt bonds. The owners of developments receiving secondary NIFA financing will be required to execute a LURA which will be recorded as a restriction binding on any successor in title to the owner (through assignment, foreclosure or an instrument in lieu of foreclosure) to agree to repay or assume the outstanding balance of such secondary financing indebtedness to NIFA as a condition to an agreement by NIFA to execute a new LURA (a new LURA is necessary for the successor in title to claim any LIHTCs remaining in connection with the development).

All information submitted to NIFA will, to the extent permitted by law, be kept confidential and will not be available to any other applicant or third party. Applicants will be given their scoring results upon request and may receive the total scoring results of the other developments on an anonymous basis.

Applicants who have been convicted of, entered an agreement for immunity from prosecution for or pleaded guilty (including a plea of no contest) to a crime of dishonesty, moral turpitude, fraud, bribery, payments of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records are ineligible to apply for LIHTCs. Applicants who have been barred from any other NIFA program, other state LIHTC programs or any federal programs are also ineligible to apply for LIHTCs. Applicants having an identity of interest with any barred entity may also not be eligible to apply for LIHTCs at the sole discretion of NIFA. Furthermore, NIFA reserves the right to amend or modify any of the program instructions or procedures contained within the QAP and LIHTC Application and may exercise such right at any time and without liability to any applicant or other party for their expenses incurred in the preparation of a LIHTC Application or otherwise.

## **9. LIHTC COMPLIANCE MONITORING.**

During the 15-year Compliance Period as set forth in the LURA, NIFA, as part of this LIHTC Allocation Plan, is required to adopt and adhere to compliance monitoring procedures which will: (i) monitor developments for noncompliance and (ii) notify the IRS of any noncompliance of which NIFA becomes aware of in accordance with Section 42(m) of the Code, Treasury Regulation §1.42-5 and any other applicable regulations. All development owners must enter into a LURA with NIFA, binding all parties to comply with Section 42 of the Code, Treasury Regulation §1.42-5 and any other applicable regulations, such as the Violence Against Women Act of 2013. Pursuant to the LURA, development owners (or the management agents thereof) are required to attend, on an annual basis, a compliance seminar sponsored by NIFA. In addition, development owners with items of noncompliance that have not been corrected in a timely fashion may be required to provide quarterly compliance reports to NIFA and may, in NIFA's sole discretion, be ineligible to receive future allocations of LIHTCs.

The following procedures outline NIFA's plans for compliance monitoring by development owners. Such procedures, together with the covenants and representations contained in the LURA (which form of LURA is part of the 2018 QAP) shall constitute the procedures for compliance monitoring by NIFA. (Capitalized terms used below and not otherwise defined shall have the meanings as set forth in the LURA).



## **9.1 TENANT INCOME CERTIFICATIONS.**

Development owners shall maintain a file for each Qualified Tenant residing in the development (which shall be updated during each year of unit occupancy by the development owner). Each tenant file shall contain a copy of the rent record and a copy of such tenant's executed Application and Tenant Income Certification (a form of which is attached to the LURA) as well as supporting documentation, which is subject to independent investigation and verification by NIFA. Each tenant file shall be submitted to NIFA as set forth below or in such other form and manner as may be required by the applicable rules, regulations or policies now or hereafter promulgated by the Department of the Treasury or the IRS.

## **9.2 ANNUAL OWNER CERTIFICATIONS.**

Development owners are required to immediately notify NIFA if, at any time, the residential units in a development are not occupied or available for occupancy as provided above. Development owners shall prepare and submit, under penalty of perjury, to NIFA, no later than January 15<sup>th</sup> of each year following the first year in which the minimum set-aside is required to be met, a Certificate of Continuing Program Compliance (a form of which resides on NIFA's website at [www.nifa.org](http://www.nifa.org)) and an Annual Tax Credit Summary Report (a form of which resides on NIFA's website at [www.nifa.org](http://www.nifa.org)), both executed by the development owner stating the number of dwelling units in the development which, as of the first date of such calendar year, were occupied by Qualified Tenants (or were deemed to be occupied by Qualified Tenants as provided in the LURA for all or part of such period), together with copies of annual Certifications of Tenant Eligibility and Income Verification (and supporting documentation) and submission of Certification On-Line (COL) data collected by the development owner.

## **9.3 RECORD KEEPING AND RETENTION.**

Development owners are required to collect and retain records for each qualified low-income building in the development for at least six years after the due date (with extensions) for filing the federal income tax return for such year. Notwithstanding the above, records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for the filing of the federal income tax return for the last year of the 15-year Compliance Period of the building. Such records shall include for each year during the 15-year Compliance Period the following information pertaining to each building in the development:

- (a) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- (b) The percentage of residential rental units in the building that are Qualified Units;
- (c) The rent charged on each residential rental unit in the building, including any utility allowances;
- (d) The number of occupants in each Qualified Unit and any changes in the number of occupants in each Qualified Unit;
- (e) The Qualified Unit vacancies in the building and information that indicates when, and to whom, the next available units were rented;

- (f) The annual income certification of each Qualified Tenant per Qualified Unit;
- (g) Documentation to support each Qualified Tenant's annual income certification (for example, a copy of the Qualified Tenant's federal income tax return, Forms W-2 or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is to be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), and not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, this documentation requirement is satisfied if the public housing authority provides a statement to the development owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Code;
- (h) The Eligible Basis and the Qualified Basis of the building at the end of the first year of the Credit Period; and
- (i) The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

#### **9.4 REVIEW PROCESS.**

For each year of the Affordability Period, NIFA will perform a compliance review on the development. Certifications and other information submitted to NIFA (as described above) shall be reviewed for compliance with the requirements of Section 42 of the Code.

#### **9.5 ON-SITE INSPECTION AND TENANT FILE REVIEW.**

The LURA provides that NIFA, or its designated agent, shall have the right to perform on-site inspections of each building in the development, inspect each Qualified Unit and review the tenant file for each such Qualified Unit.

NIFA, or its designated agent, will conduct an on-site inspection of each building in the development and inspect at least 20% of the Qualified Units and review the tenant files for such Qualified Units. On-site inspections and tenant file reviews shall be conducted by the end of the second calendar year following the year in which the last building in the development was placed in service. Thereafter, NIFA, or its designated agent, will conduct on-site inspections of all buildings in the development and review the tenant files at least once every three years. NIFA shall notify each development owner in advance of any such on-site inspection and review. NIFA shall randomly select which Qualified Units and tenant records will be inspected and reviewed.

Any duly authorized representative of NIFA, the Department of the Treasury or the IRS may inspect the books and records of the development pertaining to the incomes of the Qualified Tenants residing in the development.

In conjunction with each on-site inspection, development owners must provide to NIFA, or its designated agent, any local health, safety or building code violations reports or notices received on the development. Based on the on-site inspection and NIFA's receipt and review of any local health, safety or building code violations reports or notices provided by the owner, NIFA shall determine whether each building in the development and its Qualified Units are suitable for occupancy.

#### **9.6 NOTIFICATION TO OWNER.**

In the event NIFA discovers a noncompliance issue with any of the provisions of the LURA or Section 42 of the Code, NIFA will immediately notify the development owner in writing. The development owner shall have 60 days from the issuance of such notice (the "Correction Period") to correct the noncompliance.

Noncompliance includes, but is not limited to, the following: (a) NIFA's failure to receive tenant income certifications, supporting documentation and rent records, (b) noncompliance with any provision of Section 42 of the Code and/or (c) any change in the applicable fraction or eligible basis of the development which would result in a decrease in the Qualified Basis of the development. NIFA shall be authorized and entitled, pursuant to the provisions of the LURA, to perform all acts necessary to comply with the monitoring and notification responsibilities set forth in Section 42(m)(i)(B)(iii) of the Code and any Treasury Regulations promulgated thereunder or other interpretations thereof by the IRS or the courts.

#### **9.7 NOTICE TO INTERNAL REVENUE SERVICE.**

Within 45 days after the expiration of the Correction Period, NIFA shall file with the IRS, a copy of Form 8823, setting forth the nature of the noncompliance and whether or not such noncompliance has been corrected.

#### **9.8 LIABILITY AND DISCLOSURE OF INFORMATION.**

Compliance with the requirements of Section 42 of the Code is the sole responsibility of the development owner. NIFA's obligations to monitor for compliance with the requirements of Section 42 of the Code does not, and will not, make NIFA liable for a development owner's noncompliance.

All Pre-Applications and LIHTC Applications, materials, exhibits and correspondence submitted to NIFA are the property of NIFA. An agreement may be made between NIFA and any other appropriate federal regulatory agency to exchange such information.

**10. NIFA CONTACT INFORMATION.**

Correspondence and inquiries should be directed to:

Nebraska Investment Finance Authority (NIFA)  
1230 O Street, Suite 200  
Lincoln, NE 68508-1402

Attention: LIHTC Program  
Telephone: (402) 434-3900  
(800) 204-NIFA  
Internet: [www.NIFA.org](http://www.NIFA.org)

## EXHIBIT A

### FAIR HOUSING ACT ACCESSIBILITY CERTIFICATION

The following is a certification regarding design and construction requirements of the Fair Housing Act (the “Act”). This certification represents many, but not all, of the requirements to the Act. This certification is not intended to be exhaustive; rather, it is a helpful guide in determining if the major requirements of the Act have been met in designing and constructing the development. **If a box below is not checked due to the applicability of an exception to the Act, the architect MUST include an explanation of the exception, including a citation to the relevant section of the Act.**

#### GENERAL REQUIREMENTS

- Development has buildings containing 4 or more units and was designed and constructed for first occupancy on or after March 13, 1991.
- If it is an elevator building, all units are “covered units.”
- All units in buildings with elevators have features required by the Act.
- If it is a non-elevator building, all ground-floor units are “covered units.”
- All ground-floor units in buildings without elevators have features required by the Act.

**NOTE:** There is a narrow exception which provides that a non-elevator building in a development need not meet all of the Act’s requirements if it is impractical to have an accessible entrance to the non-elevator building because of hilly terrain or other unusual characteristics of the site.

#### ACCESSIBLE BUILDING ENTRANCE ON AN ACCESSIBLE ROUTE

- The accessible route is a continuous, unobstructed path (no stairs) through the development that connects all buildings containing covered units and all other amenities.
- The accessible route also connects to parking lots, public streets, public sidewalks and public transportation stops.
- All slopes are no steeper than 8.33%.
- All slopes between 5% and 8.33% have handrails.
- Covered units have at least one entrance on an accessible route.

- There are sufficient curb cuts for a person using a wheelchair to reach every building in the development.

#### COMMON AND PUBLIC USE AREAS

- At least two percent of all parking spaces are designated as handicapped parking.
- At least one parking space at each common and public use amenity is designated as handicapped parking.
- All handicapped parking spaces are properly marked.
- All handicapped parking spaces are at least 96" wide with a 60" wide access aisle which can be shared between two spaces.
- The accessible aisle connects to a curb ramp and the accessible route.
- The rental or sales office is readily accessible and usable by persons with disabilities.
- All mailboxes, swimming pools, tennis courts, clubhouses, rest rooms, showers, laundry facilities, trash facilities, drinking fountains, public telephones and other common and public use amenities offered by the development are readily accessible and usable by persons with disabilities.

#### USABLE DOORS

- All doors into and through covered units and common use facilities provide a clear opening of at least 32" nominal width.
- All doors leading into common use facilities have lever door handles that do not require grasping and twisting.
- Thresholds at doors to common use facilities are no greater than 1/2".
- All primary entrance doors to covered units have lever door handles that do not require grasping and twisting.
- Thresholds at primary entrance doors to covered units are no greater than 3/4" and beveled.

#### ACCESSIBLE ROUTE INTO AND THROUGH THE COVERED UNIT

- All routes through the covered units are no less than 36" wide.

#### ACCESSIBLE ENVIRONMENTAL CONTROLS

- All light switches, electrical outlets, thermostats and other environmental controls must be no less than 15" and no greater than 48" from the floor.

REINFORCED BATHROOM WALLS FOR GRAB BARS

- Reinforcements are built into the bathroom walls surrounding toilets, showers and bathtubs for the later installation of grab bars.

USABLE KITCHENS AND BATHROOMS

- At least 30" x 48" of clear floor space at each kitchen fixture and appliance.
- At least 40" between opposing cabinets and appliances.
- At least a 60" diameter turning circle in U-shaped kitchens unless the cooktop or sink at end of U-shaped kitchen has removable cabinets beneath for knee space.
- In bathroom, at least 30" x 48" of clear floor space outside swing of bathroom door.
- Sufficient clear floor space in front of and around sink, toilet and bathtub for use by persons using wheelchairs.

Certification completed by the development architect:

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

