

**TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM**

SUBCHAPTER 1. GENERAL PROVISIONS

330:36-1-1. Purpose

The purpose of the Oklahoma Affordable Housing Tax Credit ("OAHTC") Program is to expand the supply of new affordable rental units and rehabilitate existing rental housing for qualifying households by stimulating private investment.

330:36-1-2.1. Authority

The federal Tax Reform Act of 1986 ("Act") and Section 42 of the Code authorize the Credits. Oklahoma Housing Finance Agency ("OHFA") has been designated by the Governor as the State's allocating agency for purposes of administering the OAHTC Program.

330:36-1-3.2. Scope

During each program year, TCAs will be made available to eligible entities for the purpose of implementing specific projects that further the stated purpose of the OAHTC Program. Eligible entities include, but are not limited to, for-profit developers, non-profits, public agencies, Native American Tribes and local governments.

330:36-1-4. Definitions

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional capitalized terms used in these Chapter 36 Rules are defined in the Code. When a conflict exists between the following definitions and the Code the more restrictive meaning shall be applied.

"Affiliate" means any Person that directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any other Person.

"Allocation" means the maximum amount of TCA's available to the Development as a result of the approval of an award by the Trustees. The Credit shall be apportioned to each Qualified Building at the time such Qualified Building is Placed-In-Service.

"Applicable Fraction" means the fraction used to determine the qualified basis of a qualified low income building which is the smaller of the unit fraction or the floor space fraction.

"Applicant" means any individual, nonprofit organization or profit-motivated individual, corporation, general or limited partnership, limited liability company or other legal entity which has submitted an Application to OHFA for a Credit Reservation and Allocation, and its successors in interest. "Applicant" includes the Taxpayer and Taxpayer's predecessor in interest, if any, and includes any successor in interest,

Transferee, of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, Transferee, Taxpayer or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having any right, title, or interest in the Development.

"Application" means an application in the form prescribed by OHFA, from time to time, in the AP, including all exhibits and other materials filed by an Applicant with OHFA in support of or in connection with the formal request by the Applicant requesting a TCA.

"Application Packet" (referred to in these Rules as the "AP") means the Application in the form prescribed by OHFA from time to time, together with instructions and such other materials provided by OHFA to any Person requesting the same for the purpose of seeking to obtain from OHFA a TCA. OHFA will solicit public input on the Application Packet, and provide explanation of any significant changes. The AP may include definitive statements of what shall constitute Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring requirements as may be authorized by or provided for in the Code and these Rules, and may include the necessary forms, instructions and requirements for Applications, environmental assessments, market studies, commitments, extensions, Carryover Allocations, Agreements, Elections, Set-asides, OHFA staff evaluation criteria for Threshold Criteria and Selection Criteria, final ranking, Credit amounts, tax exempt bond financed projects, compliance monitoring, and other matters deemed by OHFA Trustees, in their complete discretion, to be relevant to the process of evaluation of Applications and the Applicants in connection with the award or denial of TCAs.

"Area Median Gross Income" means the median gross Income adjusted for household size, for the county or counties where each Building in a Development is located as determined and published annually by HUD.

"Building" means a Residential Rental Property containing residential Housing Units located on the land and included in the Development. For purposes of the Credit Program, each Building is identified by its Building Identification Number assigned by OHFA BIN and its street address assigned by the United States Postal Service. In case of any inconsistency, the BIN shall control. In the event more than one Building is located on the land, each Building must be identified in the manner required by Code Section 42(g) to be treated as part of the Development. Any Allocation of Credit shall be effective only for the Building(s) identified in a Carryover Allocation Agreement, if applicable, or in Exhibit "A" to the Regulatory Agreement.

"Capital Needs Assessment" (CNA) means a qualified professional's opinion of a property's current physical condition determined after a physical inspection of the interior and exterior of the units and structures. The physical inspection should include an interview with the on-site manager and maintenance personnel. This assessment should identify deferred

maintenance, physical needs, remaining useful life of key components, building material deficiencies and material building code violations that affect the property use, structural and mechanical integrity, and the future physical and financial needs. The assessment must include the cost of labor and materials identified in detail and the extent of future expenditures contemplated to ensure the costs will be addressed through operating and replacement reserves. Components which should be examined and analyzed in this assessment include but are not limited to:

- (A) site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, gas and electric utility lines;
- (B) structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system and drainage;
- (C) interiors, including unit and common area finishes (carpeting, vinyl or tile flooring, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors ; and
- (D) mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, fire protection and elevators.

"Carryover Allocation" means, an Allocation which is made with respect to a Building or Development pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), as the case may be, and in conformance with IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

"Carryover Allocation Agreement" means the contract between Taxpayer and OHFA, authorized and approved by the Trustees, wherein subject to the satisfaction by Taxpayer of the terms, conditions, obligations and restrictions contained therein or in any Resolution of the Trustees, a Carryover Allocation is made pursuant to Code Section 42(h)(1)(E) and/or Code Section 42(h)(1)(F), IRS Notice 89-1 and Treasury Regulation Section 1.42-6.

"Certifications" means the representations made under penalties of perjury by the Applicant, Taxpayer, each Developer, each partner or general partner, party to a joint venture, and/or Resident, as applicable, including but not limited to those representations and certifications set forth in the Applications and the Regulatory Agreement and Exhibits. Certifications also mean any and all representations made under penalties of perjury with respect to the Development at any time from the date of submission of the Application and throughout the Development Compliance Period.

"Code" means the Internal Revenue Code of 1986, as amended, and in effect at the date of the Regulatory Agreement, together with applicable rules and regulations, revenue rulings, guidelines, releases, pronouncements, notices or procedures promulgated thereunder or referred to therein or in the applicable rules and regulations.

"Commitment" means a representation or agreement of the Taxpayer/Applicant contained in the Application, or otherwise, which in all cases shall be irrevocable and binding upon Taxpayer and its Transferees and successors in interest throughout the Development Compliance Period, unless otherwise noted in the Regulatory Agreement, these Rules, the Application, or any other agreements entered into by Taxpayer with OHFA in connection with the Credit Program.

"Compliance Period" means with respect to any Qualified Building, the continuous fifteen (15) year period over which the Qualified Building must satisfy all requirements of the Code and the Credit Program. The Compliance Period begins with the first year of the Credit Period.

"Consultant" means any person (which is not an Affiliate of an owner of the Development) that provides professional or expert services relating to an Application, a Development, or any activities pertaining to the filing of an Application, the award of a TCA, the Carryover Allocation, or cost certification documents filings with OHFA.

"Control" (including the terms "controls", "controlling", "controlled by", and/or "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction or the management and policies or any other Person, whether through an ownership interest in the other Person, by contract, agreement, understanding, designation, office or position held in or with the other Person or in or with any other Person, or by coercion, or otherwise.

"Credit" means the low-income housing tax Credit available for federal income tax purposes under Code Section 42 for a Qualified Building.

"Credit Period" means the ten (10) year period over which the Credit may be claimed for a Building. The Credit Period begins when the Building is placed in service, for Credit purposes, or if the Taxpayer makes an election under Section 42(f)(1)(B) of the Code, the next year; but only if the Building is a qualified low-income building within the meaning of Code Section 42(c)(2), by the end of the first year of that period. For an existing Building with Rehabilitation Expenditures, the Credit Period shall not begin before the year that the rehabilitation Credit is allowed under Code Section 42(f)(5).

"Credit Program" means OHFA's program for approving Allocations and includes, without limitation, adopting the Qualified Allocation Plan and OHFA's Credit Program Rules, the AP, and all things contemplated therein or appurtenant thereto, including without limitations, monitoring Developments throughout the Extended Use Period and notifying the IRS of the Building's or a Development's failure to comply with Code requirements.

"Credit Reservation" means the reservation of a maximum amount available for Allocation to such Development and apportioned to each Qualified Building therein upon meeting the requirements of the Credit Program and Code Section 42.

"Developer" means the person or entity with the responsibility of ensuring the effective construction or rehabilitation of the

Development, including any and all responsibilities as outlined in the Development Agreement, which may also be the Applicant and/or Taxpayer of the Development. Developer also includes any other person or organization affiliated with, Controlled by, In Control Of or A Related Party to, the Developer, as determined by OHFA.

"Development" means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) Building is to be part of the Development, each Building must be financed under a common plan and identified in the manner required under Code Section 42(g).

"Development Compliance Period" means the period beginning with the first day the first Building of the Development is Placed-In-Service and continuing thereafter until the latest to end of the following periods for each Building in the Development: (i) the Compliance Period; (ii) the Extended Use Period; or (iii) the "Three Year Period."

"Development Team" means the Applicant, architect, attorney, consultant, developer, general contractor, market analyst and/or appraiser, property management company, tax professional, Taxpayer, and the principals of each.

"Drug" for purposes of these OAHTC Program Rules, means "a controlled substance" as that term is defined in Section 102 of the Controlled Substances Act, 21 U.S.C., Section 802.

"Drug-Related Criminal Activity" means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

"Due Date" if a due date for submission of documents or fees falls on a weekend or a designated Federal holiday, then the due date becomes the next business day.

"Elderly" means a person sixty-two (62) years of age or older. This definition is for consideration for the Elderly set-aside and for points in which one hundred percent (100%) of units are for Elderly.

"Eligible Basis" means generally the depreciable basis in the property.

"Extended Use Period" means the continuous period, a minimum of fifteen (15) years, following the close of the Compliance Period during which a Qualifying Building must satisfy all requirements of the Code and the Credit Program. The Extended Use Period for the Development is set forth on Exhibit "A" to the Regulatory Agreement and may not be revoked or terminated prior to said date except as provided in the Code, these Chapter 36 Rules or in the Regulatory Agreement.

"Gross Rent" means the rent received for a Low-Income Housing Unit, including utility allowances but excluding (i) any payments under Section 8 or any comparable rental assistance program; (ii) any fees or supportive services (within the meaning of Code Section 42(g)(2)(B); (iii) paid to Taxpayer (on the basis of the low-income status of the Qualified Resident of the Low-Income Unit) by a governmental assistance program or an organization

exempt from federal income tax under Code Section 501(c)(3), if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services; and (iv) rental payments to Taxpayer to the extent an equivalent amount is paid to the RHS under Section 515 of the Housing Act of 1949. Gross Rent includes the minimum amounts paid toward purchase of a Housing Unit as described in Code Section 42(g)(6). The amount of Gross Rent is determined annually based upon the Area Median Gross Income for the locality in which the Development is located. The annual amount may decrease but such amount will not be reduced below the amount of Gross Rent established in the first Year of the Credit Period.

"Hard Construction Costs" means the following types of activities, but not limited to, earthwork/site work, on-site utilities, roads and walks, concrete, masonry, metals, carpentry (rough and finish), moisture protection, doors/windows/glass, insulation, roofing, sheet metal, drywall, tile work, acoustical, flooring, electrical, plumbing, elevators, blinds and shades, appliances, lawns & planting, fence, cabinets, carpets, and heat & ventilation. For calculations of contractor fees, a reasonable contingency can be included.

"Homeless" means (1) lacking a fixed, regular and adequate nighttime residence; and has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as sleeping accommodations for human beings, OR (2) displaced as a result of fleeing violence in the home; and has a temporary residence that is a supervised public or private shelter OR (3) certified by an agency involved in regularly determining homeless status. OR (4) displaced as a result of a major disaster and receives FEMA assistance. Homeless individuals are considered homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i)(3)(B)(iii)(I) of the Code.

"Housing Unit" means a Low-Income Unit and/or Market Rate Unit located in a Building which is available for rent or is rented by Residents. Common Area Units are not included.

"HUD" means the U.S. Department of Housing and Urban Development.

"Income" means the income of one or more Qualified Residents, as determined in a manner consistent with the methods under HUD's Section 8 Program.

"IRS" means the Internal Revenue Service of the Treasury.

"IRS Form 8609" means the IRS Form entitled "Low Income Housing Credit Certification" issued by OHFA no later than the end of the calendar year that such Building is Placed-In-Service or to be issued. The IRS Form 8609 establishes the maximum Credit for a Building.

"IRS Form 8823" means the IRS form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" issued or to be issued by OHFA with respect to issues of noncompliance with the laws of the IRS and/or the sale

or disposition of the Development.

"Land" means the site(s) for each Building in the Development and having the legal description set forth described in the Carryover Allocation Agreement and Exhibit "A" to the Regulatory Agreement.

"Large Development" means a Development with more than sixty (60) units.

"LIHTC Program" means the Credit Program. "LIHTC Program" may be used interchangeably with the term "Credit Program" or "OAHTC Program".

"Low-Income Unit" means a Housing Unit that is both Rent-Restricted and occupied by Qualified Residents, provided that: (i) Housing Unit shall constitute a Low-Income Unit only if it is suitable for occupancy taking into account local health, safety and building codes and it is used other than on a transient basis except in the case of transitional housing, all as determined under Code Section 42(i)(3); and (ii) Housing Unit in any Building which has four (4) or fewer Total Housing Units shall not constitute a Low-Income Unit if any Housing Unit in the Building is occupied by an Owner or a related person [within the meaning of Code Section 42(i)(3)(C)] unless such Building is described in Code Section 42(i)(3)(E).

"Market Rate Unit" means a Housing Unit that does not meet the definition of a Low-Income Unit.

"Minimum Low-Income Housing Set-Aside" means the minimum percent required under Code Section 42(g) of Housing Units in the Development to be both Rent-Restricted and occupied by Qualified Residents, i.e., Residents whose Income is at or below a certain percentage of Area Median Gross Income. For purposes of Code Section 42(g), Taxpayer must have selected either: (i) twenty percent (20%) or more of the Total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below fifty percent (50%) percent of the Area Median Gross Income; or (ii) forty percent (40%) or more of the Total Housing Units to be Rent-Restricted and occupied by Residents whose Income is at or below sixty percent (60%) of the Area Median Gross Income as the Minimum Low-Income Housing Set-Aside. The Applicant may, however, have made a Commitment to provide greater percentages of Housing Units that are both Rent-Restricted and occupied by Residents meeting the above Income limitations and/or making Housing Units available to Residents with Income below the above limitations, i.e., an Additional Low-Income Housing Set-Aside. Taxpayer and all Transferees, and successors in interest shall be bound by all Commitments, including the Minimum Low-Income Housing Set-Aside, or Additional Low-Income Housing Set-Aside made in the Regulatory Agreement, or included in the Carryover Agreement or any of the Resolutions of the Trustees respecting the Application, the Development, or Taxpayer.

"National Non-Metro Area Median Income" means as determined and published annually by HUD.

"Nonprofit" means a private nonprofit organization that is organized under State or local laws; has no part of its net earnings inuring to the benefit of any member, founder,

contributor, or individual; is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization; has a tax exemption from the Internal Revenue Service under section 501(c) (3) or (4) of the Internal Revenue Code of 1986; does not include a public body; has among its purposes the provision of decent housing that is affordable to low income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws; and, has at least a one year history of providing affordable housing at the local level, and is duly qualified to do business within the State.

"Nonprofit Sponsored Development" means and refers to a proposed Development that has or will have a Nonprofit that has a Controlling interest by reason of an ownership interest in a Person that is or will be the owner of the subject Development, and has materially participated, or will materially participate (within the meaning of the Code) in the Development and operation of the Development throughout the Compliance Period.

"OAHTC Program" means the Credit Program. "OAHTC Program" may be used interchangeably with the term "LIHTC Program" or "Credit Program".

"OHFA" means Oklahoma Housing Finance Agency a State-beneficiary public trust. OHFA is the allocating agency for the State for purposes of the Credit Program.

"One Year Period (1YP)" means period commencing on the date on which OHFA and the owner agree to the Qualified Contract price in writing and lasting twelve (12) calendar months.

"Owner" means the legal Owner of record of the Development, as set forth on page one of the Regulatory Agreement, and any and all successor(s) in interest of Owner, including any and all Transferees, Assignees, purchasers, grantees, owners or lessees (other than a Resident) of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any Transferee, purchaser, assignee, grantee, owner or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having or acquiring any right, title, or interest in the Development. Owner is also the Taxpayer, Applicant or the Applicant's successor in interest.

"Partnership" means any syndicate, group, pool or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is treated for federal income tax purposes as a partnership and is not considered within the meaning of the Code, a trust or estate or a corporation. A Partnership may be a general Partnership or a limited Partnership and must have partners and an objective to carry on business and divide the gains therefrom.

"Person" means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, or other organization of any nature whatsoever, and shall include any two

or more Persons acting in concert toward a common goal.

"Placed-In-Service" means: (i) the date on which a new Building or existing Building used as residential rental property is ready and available for its specifically assigned function as evidenced by a certificate of occupancy or the equivalent; or (ii) for rehabilitation expenditures that are treated as a separate new Building, any twenty-four (24) month period over which such Rehabilitation Expenditures are aggregated.

"Preliminary Application (QCPA)" means a request containing all information and items necessary for OHFA to determine the eligibility of an Owner to submit a request for a qualified contract.

"Program Rules" means the various written criteria, requirement, rules, and policies adopted from time to time by the Trustees as the State's Qualified Allocation Plan to administer the Credit Program and to provide for Allocations. The Program Rules must be followed by any participant in the Program. The Program Rules may include requirements that are more stringent than those under Code Section 42.

"Qualified Allocation Plan (QAP)" means these Chapter 36 Rules plus the Application Packet (AP) as defined and other materials provided by OHFA. The deadline for all informal input sessions and the formal public hearing will be published by OHFA Staff.

"Qualified Building" means a Building which meets the terms, conditions, obligations, and restrictions of the Program Rules, Carryover Allocation Agreement, Regulatory Agreement, Resolutions of the Trustees respecting Taxpayer or the Development, and Code Section 42(c)(2) for an Allocation and the issuance by OHFA of IRS Form 8609.

"Qualified Contract" means a bona fide contract to acquire the portion of a Building which is not Rent-Restricted for fair market value and the portion of the Building which is Rent-Restricted for an amount not less than the Applicable Fraction for the Building or the sum of: (i) the portion of outstanding indebtedness secured by, or with respect to the Building which is allocable to such Building; (ii) adjusted investor equity in the Building; and (iii) other capital contributions invested in the Building but not reflected in the amounts described in (i) or (ii) above; reduced by cash distributed from the Development or available for distribution from the Development; provided that in all cases, the purchase price for the Building required for a contract to be a Qualified Contract shall be determined in a manner consistent with the requirements of Code Section 42(h)(6)(F), or such other regulations as prescribed by the Code to carry out this section.

"Qualified Contract Application (QCA)" means an application containing all information and items required by the OHFA to process a request for a Qualified Contract.

"Qualified Contract Price (QCP)" means calculated purchase price of the development as defined within §42(h) (6) (F) of the Code and as further delineated in Chapter 36 Rules.

"Qualified Development" means a Development or Residential Rental Property where an Applicable Percentage or more of the Housing Units are both Rent-Restricted and occupied by Residents

whose Income is at or below the level selected as the Minimum Low Income Housing Set Aside.

"Qualifying Households" means households whose annual incomes do not exceed the chosen set-aside (which is either 50% or 60%) of the median family income for the area.

"Regulatory Agreement" means the written and recorded agreement between a recipient of a TCA and the allocating agency, OHFA, placing restrictive covenants upon the Development and the underlying land for a term of not less than thirty years (30) years, or such other term as may be required from time to time by provisions of the AP, these OAHTC Rules and Section 42 of the Code and the federal rules and regulations promulgated thereunder and containing other restrictions, covenants, warranties and agreements required by state, federal or local law and these OAHTC Rules.

"Rehabilitation Expenditures" means amounts that are capitalized and incurred for the addition to or improvement of an Existing Building of a character subject to the allowance for depreciation under Section 167 of the Code. However, it does not include the costs of acquiring a Building or an interest in it, for example, any Developer Fee properly allocated in acquiring a Building or any other soft costs or any amount not permitted to be taken into account under Section 42(d)(3) or Section 42(d)(4) of the Code.

"Rent-Restricted" means that the Gross Rent with respect to a Low-Income Unit does not exceed thirty percent (30%) of the income limitations for Qualified Residents adjusted by the Imputed Household Size, subject to the exception set forth in Code Section 42(g)(2)(E) (relating to certain Housing Units for which federal rental assistance decreases as Resident Income increases).

"Resident" means an individual or group of individuals (other than an Owner) residing in a Housing Unit.

"Resolution" means an official action of the Trustees and includes all Resolutions adopted by the Trustees with respect to a Development.

"Review Report" means the Threshold Criteria Review and Selection Criteria Review containing the results of OHFA's review of the Application and scoring of the Application. There are preliminary and final versions of the review report for each Application.

"Rural Area" means any city, town, village, area or place generally considered rural by the Secretary of Agriculture (RHS) for rural housing programs. Verification will be obtained by contacting the Stillwater USDA-RD office.

"Rural Development" means a Development that is, or will be located within a Rural Area. RHS 538 projects are not eligible for the Rural 515 set-aside, but may qualify under other set-asides.

"Section 8" means Section 8(c)(2)(A) of the United States Housing Act of 1937, as amended.

"Selection Criteria" means the evaluation criteria, over and above the Threshold Criteria, set out in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP (using the priorities for the State as they

are established from time to time under and pursuant to these Rules and the applicable AP), to determine the Development's qualifications, and which are the basis for ranking Applications and establishing a relative level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Although the Selection Criteria may be given substantial weight by OHFA Trustees in deciding whether or not a particular Application and Applicant shall be awarded a TCA, the OHFA Trustees reserve the right to take into consideration such other factors as they, in their complete discretion, deem appropriate.

"Site Control" means the exercise of dominion or control over the property through the execution of a purchase, sale, or long-term lease agreement (with a lease term that exceeds the extended use period), receipt of a deed or conveyance of the Land where the development will be located, or an option to purchase the property (where the option is not revocable on the part of the seller). OHFA alone will decide if an Applicant or Taxpayer has obtained Site Control.

"Special Needs" means such targeted populations as may be designated from time to time in an Application Packet by official action of OHFA's Board, which designations may include, but are not necessarily limited to, the homeless, the elderly, persons with mental and physical disabilities and/or disabled persons.

"State" means the State of Oklahoma.

"TCA" means a federal low-income tax Credit allocation by OHFA to a Development owner pursuant to Section 42 of the Code, these Rules, QAP, the Act, the applicable AP, the Application, and formal action by the OHFA Board of Trustees.

"Three-Year Period" for a Building means the three (3) year period following: (a) the date of acquisition of such Building by foreclosure or forfeiture under a deed of trust, mortgage or real estate contract or by deed in lieu of foreclosure; or (b) the end of the Extended Use Period, or (c) in the case of the release of the affordability restriction due to the failure of OHFA to present a QC before the expiration of the One Year Period, the recording of a Release of Regulatory Agreement by OHFA. During the Three-Year Period the owner may not evict or terminate a tenancy of an existing tenant of any low-income unit except for good cause. During the Three-Year Period the owner may not increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code.

"Threshold Criteria" means the criteria set out herein and in an applicable AP, which shall be established and may be changed by OHFA from time to time in an applicable AP, to determine the qualifications of the Applicant and the Taxpayer and the Proposed Development, presented in each Application that are the minimum level of acceptability for consideration under the Rules and the applicable AP for the possibility of the award of a TCA by OHFA. Failure to satisfy all Threshold Criteria set out in the applicable AP shall result in the disqualification of the Application for further consideration, and shall require no further action by OHFA Staff except to notify the Applicant of the

disqualification.

"Total Housing Units" means all Housing Units in a Building including both Market Rate Units and Low-Income Units.

"Total Development Costs" means the total costs incurred in acquiring and developing the Development as set forth in the proposed budget for the Development included in the Application and in an independent certified public accountant's certification of sources and uses of funds submitted to OHFA.

"Transfer" means any sale, transfer, merger, consolidation, liquidation, contribution, assignment, exchange or other change in all or part of Ownership of the Land and/or Development or any Building which is a part thereof, whether voluntary or involuntary, and also includes: a transfer, sale, contribution or assignment by the Applicant, Taxpayer or Developer of all or any part of its rights, title or interest in the Application, Carryover Allocation Agreement, Credit, Land, Building and/or Development to another party; or a withdrawal, change or addition of any partner to a general Partnership, general partner of a limited Partnership, any party to a joint venture or the manager of a limited liability company.

"Transferee" means any and all successor(s) in interest of Taxpayer, including any and all Transferees, Assignees, purchasers, grantees, owners or lessees (other than a Resident) of all or any portion of the Development, and the heirs, executors, administrators, devisees, successors and assigns of any Transferee, purchaser, assignee, grantee, owner or lessee (other than a Resident) of all or any portion of the Development, and any other person or entity having or acquiring any right, title, or interest in the Development. Owner is also the Taxpayer, Applicant or the Applicant's successor in interest.

"Transitional Housing" for purposes of these OAHTC Program Rules means transitional housing for the homeless which meets the requirements of Code Section 42(i)(3)(B)(iii)

"Treasury" means the United States Department of the Treasury.

"Trustees" means the Board of Trustees of OHFA.

"Unit Fraction" means the fraction of a Building devoted to low-income housing, the numerator of which is the number of Low-Income Housing Units in the Building, and the denominator of which is the number of Total Housing Units, whether or not occupied, in the Building.

"Violent Criminal Activity" means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

330:36-1-7. National standards incorporated by reference

(a) The national standards for Development of the OAHTC Program are hereby incorporated by reference, including Code Section 42 and all federal regulations, promulgated thereunder, including, but not limited to, 26 CFR Sections 1.42-5, 1.42-6, 1.42-11, 1.42-13 and 1.42-17.

(b) Copies of Code Section 42 and applicable federal regulations may be obtained from OHFA, during regular business hours Monday

through Friday 8:00 a.m. to 4:45 p.m., excluding legal holidays. They can also be accessed at www.ohfa.org.

330:36-1-9. Regulatory Agreement/Compliance Manual/Compliance with Applicable Laws

(a) **Regulatory Agreement.** TCA recipients (taxpayers) must enter into a written Regulatory Agreement with OHFA. Requirements, procedures, and processes provided in the applicable Regulatory Agreement and amendments to it shall apply to Developments and the owner(s) thereof selected to receive a TCA.

(b) **Compliance Manual.** OHFA shall provide each owner upon request with a Compliance Manual at a cost sufficient to defray the cost of production. The Compliance Manual will also be available on OHFA's website at www.ohfa.org.

(c) **Compliance with Applicable Laws.** The Taxpayer, Applicant, the Development, the Owner(s) of the Development, the Development Team and the Affiliates of each must comply with all applicable federal, state and local laws, rules, regulations and ordinances, including but not limited to, Code Section 42, and regulations promulgated thereunder, the Oklahoma Landlord Tenant Act, the Titles VI and VII of the Civil Rights Act of 1964, as amended and Title VIII of the Civil Rights Act of 1968, as amended. Neither the Applicant, the owner(s) of a Development, the Development Team nor the Affiliates of each shall discriminate on the basis of race, creed, religion, national origin, ethnic background, age, sex, familial status or disability in the lease, use or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and/or management of any Development. The owner(s) of a Development will be required to covenant and agree in the Regulatory Agreement to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended, for the time period as promised in the application.

330:36-1-11. Technical assistance

OHFA will, from time to time, designate staff members who shall be available to provide OAHTC Program technical assistance regarding the Code, these Rules, the AP and their implementation and proposed Development concepts. The names of staff members designated from time to time to provide technical assistance may be obtained by contacting OHFA's Housing Development Team. Interested parties are strongly encouraged to make appointments for technical assistance sessions.

SUBCHAPTER 2. ALLOCATION PROCEDURES

330:36-2-1. TCAs distribution

(a) OAHTCs allocated annually to the State by the IRS shall be awarded to Applicants selected through a formal application process governed by the Qualified Allocation Plan (QAP).

(b) TCAs will be awarded according to the Act, Code, these Chapter 36 Rules, the applicable AP, and at the discretion of the OHFA

Trustees, by their formal action, giving consideration to Staff recommendation following a thorough review and financial feasibility analysis.

(c) The Trustees reserve the right, to consider and make an award of TCAs at any time as the Trustees, in their sole discretion, deem such award appropriate under the circumstances and facts presented to them. Approval of such an award shall be at a regularly scheduled or special meeting of the Trustees and shall be made by formal action, giving consideration to Staff review and recommendations.

(d) The AP shall be made available to parties considering the filing of an Application and interested parties upon request. Requests for the AP should be directed to the OHFA Housing Development Team or the AP can be accessed at OHFA's website, www.ohfa.org.

330:36-2-2. Additional Credits

(a) Guidelines for Applications for additional credits will be established in the annual AP. Limitations may be placed on types of developments, amount of additional credits, or type of applications.

(b) The timing of acceptance of applications for additional credits will also be established in the annual AP.

330:36-2-3. Set-aside categories for TCAs

(a) The annual allocation of OAHTC Program tax Credits made available to the State shall be divided into various set-aside categories, including but not necessarily limited to, specific set-aside categories of non-profits (as identified by a written determination letter from the IRS), Rural 515, Other Rural, Elderly, and such other categories as OHFA Trustees, in their complete discretion, may adopt from time to time for inclusion in an applicable AP. Non-profits competing in the nonprofit set aside must be, at a minimum, a fifty-one percent (51%) Controlling general partner, managing member, or other such entity.

(b) Specific set-aside categories and amounts for each category may be determined from time to time by formal action of OHFA Trustees and shall be set out in the applicable AP. OHFA Trustees may, in their sole discretion, modify the amount of the State's annual allocation of Credits devoted to any set-aside, if they determine that the housing needs of the State so warrant, except for the maximum ninety percent (90%) allocation limitation to those other than non-profits as required by the Code.

330:36-2-5. Geographic allocation of TCAs

OHFA's jurisdiction for location of Developments shall be the entire State of Oklahoma, and, subject to the priorities established from time to time in the applicable AP, OHFA may make awards of TCAs throughout the State.

330:36-2-7. Award amounts

(a) The maximum TCA for any one Development proposal shall not exceed \$550,000 or \$600,000 with any boost.

(b) TCAs for amounts less than applied for based upon OHFA's financial and feasibility analyses. In order to make the most efficient, equitable and practicable utilization of the State's tax Credit allocation, the Trustees of OHFA may approve, giving consideration to the recommendations of OHFA's staff, the utilization of funding from other housing programs administered by OHFA which may also result in a decrease in the amount of the TCA approved.

330:36-2-9. Reallocation of additional tax Credits

(a) Annually, additional tax Credits may become available for the award of TCAs as the result of:

- (1) Development cancellations;
- (2) Developments completed under original cost estimates;
- (3) Credits allocated but not utilized; or,
- (4) Other circumstances.

(b) In keeping with the applicable AP, OHFA may award TCAs based on the amount of Credits available, in the calendar year any such Credits first become available.

(c) The Trustees reserve the right, to consider allocations of TCAs outside the established reservation cycles for a given calendar year. The Trustees, in their sole discretion, reserve the right to approve such an allocation of TCAs, provided the facts presented to them demonstrate a special circumstance or need and said allocation promotes the development of residential use housing within the State. Provided however, the Trustees also reserve the right to deny any request for an allocation of TCAs made outside the established reservation cycles for a given calendar year. Consideration of all allocations of TCAs shall be made at a regularly scheduled or special meeting of the Trustees and shall be made by formal action, giving consideration to Staff review and recommendations.

(d) All Credits not awarded in any calendar year shall be carried over for use in the next calendar year, in accordance with the provisions of the Code, these Rules, the applicable AP and/or the formal action of OHFA Trustees.

330:36-2-11. OHFA Development notification

(a) OHFA shall, within fifteen (15) business days of receipt of an Application, and not less than thirty (30) calendar days prior to OHFA Trustee consideration thereof, notify, in writing, by certified mail or other form of traceable delivery system to provide proof of transmission and receipt, the Chief Executive Officer of each Local Governing Body of the jurisdiction within which the proposed Development is located at the time of application and the legislators who are entitled to such Notice, regarding the characteristics of the proposed Development located within their jurisdiction/district. All comments received from said Chief Executive Officer and/or legislator(s) during this thirty (30) day comment period will be presented to the Trustees for their consideration when reviewing a request for an allocation of Credits.

(b) If the application is considered at a different Board meeting

than in the notice, this notification requirement is considered to be met.

330:36-2-12. Communications with OHFA during Application Review

(a) **Communications with OHFA Employees.** Following submission of an Application, neither the Applicant nor any representative or affiliate of the Applicant shall contact any OHFA employee, concerning the Application or any other Applications filed. OHFA reserves the right, in OHFA's sole discretion, to contact the contact person(s) identified by the Applicant for the purpose of clarifying any matter.

(b) **No Ex Parte Communications with the Board of Trustees of OHFA.** Neither an Applicant nor members of the public shall communicate, directly or indirectly, with the Board of Trustees regarding an Application under consideration by OHFA except upon notice and opportunity for all parties to participate. Applicants and others who wish to communicate with the Board of Trustees must follow the specific steps as set forth in 330:36-2-13.1.

(c) **Preliminary Review Report.** Following the release of the preliminary Review Report, the Applicant may submit questions or request clarification concerning the preliminary Review Report. All such questions or inquiries must be in writing, addressed to the Staff member designated in the cover letter accompanying the preliminary Review Report. These questions may be submitted electronically. OHFA reserves the right to grant or deny requests for meetings with the Staff of OHFA at any time during the Application process. Any and all requests must be in writing.

(d) **Final Review Report.** Upon issuance of the final Review Report by OHFA, communications with OHFA shall be made in the manner and time set forth in 330:36-2-13.

(e) **Noncompliance.** Failure to comply with this subsection 330:36-2-12 may result in termination of the review process and denial of the Application.

330:36-2-13. Preliminary Review Reports

(a) Upon completion of its review of all applications, OHFA will forward OHFA's preliminary Review Report to the contact person identified by the Applicant in the Application. OHFA will mail the Review Report by certified mail with return receipt requested or other form of traceable delivery system to provide proof of transmission and receipt.

(b) The Applicant must provide OHFA with any information requested by OHFA in the preliminary Review Report or other clarifying information by the deadline given in the cover letter accompanying the preliminary Review Report. Neither the Staff nor the Trustees will be required to consider a late response to the preliminary Review Report.

(c) In the event the Applicant disputes any matter contained in the preliminary Review Report, including without limitation any finding, determination, recommendation or scoring by OHFA, the Applicant's response to the Review Report must identify with

specificity the disputed matter, finding, determination, recommendation, scoring, etc, and the Applicant's reason for disputing same, including any evidence which controverts the Review Report. Any applicable statutes, rules, regulations or ordinances should be cited. Documentary evidence should be attached.

(d) Failure to respond or dispute a finding or determination in the preliminary Review Report shall be deemed the acceptance of the finding or determination by the Applicant.

(e) The Applicant's response to the preliminary Review Report must be in writing. Electronically transmitted responses, including fax and e-mail transmissions, are not permitted and will not be reviewed. Applicants are encouraged to use certified mail, Federal Express or another carrier providing proof of timely delivery to OHFA.

330:36-2-13.1 Final Review Report.

(a) The Staff of OHFA will consider the Applicant's response to the preliminary Review Report prior to issuing the final Review Report and making its recommendations to the Trustees. The Applicant will be informed of Staff's recommendations prior to the meeting of the Trustees where the Application is being considered. OHFA will mail a copy of the final Review Report and Staff's recommendations by certified mail with return receipt requested or other form of traceable delivery system to provide proof of transmission and receipt.

(b) In the event the Applicant disputes any matter contained in the final Review Report, Applicants must file ten (10) copies of any response(s) to the final Review Report or other information they wish the Trustees to consider not less than forty-eight (48) hours prior to the commencement of the meeting where the Application will be considered.

(c) Failure to respond to Staff's final Review Report in a timely manner may result in the adoption of the final Review Report by the Trustees, including Staff's recommendations and exclusion of any additional documentation proffered by the Applicant for consideration of the Application by the Trustees.

(d) The Applicant's response to the final Review Report must be in writing. Electronically transmitted responses, including fax and e-mail transmissions, are not permitted and will not be accepted or considered by the Staff or the Trustees.

330:36-2-16. Carryover Allocations

(a) **Code reference.** Code Section 42(h)(1)(E) provides that an Allocation may be made to a Qualified Building, as defined by Section 42(h)(1)(E)(ii), which has not yet been placed in service, provided the Qualified Building is placed in service not later than the close of the second calendar year following the calendar year of the Allocation.

(b) **Carryover Allocation requests.** An eligible Applicant must request in writing the approval of a carryover of an Allocation of the applicable calendar year, at a date specified in the AP. The Taxpayer must satisfy all requirements of the Code and this

section and file proof of same with OHFA, except the verifications required by 330:36-2-16(d) of the calendar year in which a Carryover Allocation is sought. The certifications and opinions required by 330:36-2-16(d) must be received by OHFA one (1) calendar year after the date that the allocation was made. All documents requested by OHFA must be provided by the Taxpayer.

(c) **Carryover Allocation basis.** To qualify for a Carryover Allocation, the Taxpayer must demonstrate that the Taxpayer's basis in the Development, at one (1) calendar year after the date of allocation, is more than ten percent (10%) of the Taxpayer's reasonably expected basis in the Development. Developments that fail to meet the ten percent (10%) Test will not have a valid carryover allocation.

(d) **Verification of basis.** The Code requires OHFA to verify that the Owner has, by one (1) calendar year after the date of allocation, incurred more than ten percent (10%) of the reasonably expected basis in the Development (land and depreciable basis). The Taxpayer must file with OHFA a written certification, under penalty of perjury and in the form prescribed by OHFA, certifying that more than ten percent (10%) has been expended, in one (1) calendar year. The certification must be accompanied by a written opinion of the Taxpayer's certified public accountant, in a form acceptable to OHFA. It must state that said certified public accountant has examined all eligible costs incurred with respect to the Development and that, based upon this examination, it is the certified public accountant's belief that the taxpayer has incurred more than ten percent (10%) of its reasonably expected basis in the Development by one (1) calendar year as determined in conformity with the Code and Treasury Regulations. OHFA's determination as to the satisfaction of the ten percent (10%) requirement is not binding upon the IRS and does not constitute a representation by OHFA to the Taxpayer or any other party to that effect.

(e) **Carryover Allocation Agreement.** The Taxpayer must submit to OHFA an executed Carryover Allocation Agreement, in a form approved by the Trustees of OHFA, in the year in which the Carryover Allocation is requested.

(f) **Notification of placed in service date.** Applicant must notify OHFA within thirty (30) calendar days of the date the Development is placed in service or be subject to loss of any Allocation. Notice will consist of submission of copies of the Certificates of Occupancy for each building and completion of any and all forms as may be required in the AP.

(g) **Development based Allocation.** An Allocation pursuant to Code Section 42(h)(1)(F) must meet the requirements of Code Section 42(h)(1)(F), all applicable Treasury Regulations, and these Chapter 36 Rules.

330:36-2-17. Final Allocations

(a) **Prior approval.** Applicants must have previously been approved for a Reservation, either in a prior year or previously in the calendar year in which the request is made.

(b) **Deadline for filing.** Owner's request for approval of the Final Allocation must be received by OHFA at such date as OHFA may specify in writing to the Owner. Failure to file a timely Final Allocation accompanied by all required documentation may result in the denial of the Final Allocation and a determination by the Trustees that the Credits have been returned by the Applicant.

(c) **Complete filing.** The Final Allocation must be accompanied by all evidence or documentation required by the Program Rules then in effect, and such other information or documentation which may be requested by OHFA, in its sole discretion, to verify compliance with the Code, the Program Rules and the Resolutions, and to verify the amount of the Final Allocation. A complete and executed Regulatory Agreement in the form provided by OHFA and ready for filing, together with the appropriate fees, including without limitation applicable filing fees and compliance monitoring fees, must be filed with the Final Allocation. The Regulatory Agreement shall contain provisions for regulation and enforcement by OHFA and such additional provisions as may be necessary to assure compliance with Section 42 of the Code or to give effect to the requirements of OHFA.

(d) **Additional requirements.** In addition to the opinions and certifications of professionals which may be required to be filed with OHFA pursuant to 330:36-2-16 in connection with a request for a Carryover Allocation, prior to making a final Allocation, OHFA will require:

(1) An audited certification of the total Development costs, and the eligible basis and qualified basis of each Building in the Development and the sources and uses of funds for the Development prepared from an independent certified public accountant.

(2) All opinions must be in a form satisfactory to OHFA and must indicate that the professional has made an independent inquiry into the matters contained therein.

(e) **Approval.** Upon receipt of a completed Final Allocation, OHFA will conduct a final feasibility analysis. Approval of the Final Allocation is subject to Owner's continued compliance with the Code, the Program Rules, the Resolutions, all terms and conditions of this Agreement, Owner's payment of all fees required by the Program Rule.

(f) **Issuance of Form 8609(s).** Subject to the approval of the Final Allocation by the Trustees, OHFA will, upon notification by Owner that the Development (or any Building therein) has been placed in service, issue IRS Form 8609(s) respecting each such Development (or each Building therein) to the extent required by, and in accordance with, the Code and the Program Rules. No Form 8609(s) shall be issued if OHFA has not received an executed Regulatory Agreement and all Exhibits thereto, together with applicable fees.

SUBCHAPTER 4. DEVELOPMENT APPLICATIONS AND SELECTION

330:36-4-1. Development Applications

For the purpose of selecting Applicants and Developments for awards of TCAs all Applicants must submit an Application in the form prescribed in the applicable AP. The Application shall set forth, in a clear and concise manner, Threshold and Selection Criteria that conform to the Code, these Chapter 36 Rules, QAP, and the applicable AP. All Applications submitted to OHFA must contain sufficient information to permit OHFA staff to:

- (1) Make a factual determination as to whether, on its face, the Application satisfies each of the applicable Threshold Criteria, including Underwriting Standards set forth in the applicable AP; and
- (2) Make a factual determination as to whether, on its face, the Application is to be evaluated under any set-aside category established by the AP; and
- (3) Conduct a review, assessment, and evaluation for selection as described in the applicable AP.

330:36-4-1.1. Bond financed developments

(a) Taxable or tax-exempt bond developments financed at least fifty percent (50%) with the proceeds of tax-exempt bonds subject to the private activity bond volume cap are required to comply with all the requirements of these Rules with the exception of the competitive selection process.

(b) Terms of the bond financing must be submitted at time of application for tax credits, and Evidence of the bond financing must be submitted at least ten (10) business days before the board meeting wherein the four percent (4%) tax Credits are to be awarded. Failure to comply with this requirement may result in no tax Credits being allocated.

(c) Code requirements for bond financed developments must be met in addition to the AHTC requirements, i.e., rental units, rents, student exemptions, transfers on site, occupancy changes, verification of assets.

(d) Deadlines for the submission of Applications for bond financed developments will be established in the AP.

330:36-4-2. Selection of Applications for award of TCAs

(a) **General.** For the purpose of selecting Applications for awards of TCAs, OHFA may annually develop Threshold and Selection Criteria that conform to the Code, the OAHTC Program purposes and these Chapter 36 Rules for inclusion in the next year's AP. The number, severity, or value of any one or more of the Threshold or Selection Criteria items may be increased by adoption of an AP for a given year that contains such increased Threshold or Selection Criteria items. However, each AP must contain, as a minimum standard for approval of any Applications for the award of any TCAs, for any applicable AP, criteria to evaluate set-asides and all Threshold and Selection Criteria.

(b) **Minimum Threshold Criteria.** Failure to meet all Threshold Requirements set forth in the AP upon initial submission of the Application may result in the Application being rejected without further review. The Threshold Criteria may include, but are not

necessarily limited to the following:

(1) **Notice Requirements.** The provisions of this subsection apply to all Applicants for a TCA, All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application requires notice. If the application is considered at a different Board meeting than in the notice, this notification requirement is considered to be met.

(A) **Written Notices.** The Applicant must notify, in writing and by certified mail, the local Chief Executive Officer of the local Governing Body, Chairman of the appropriate county commissioners, state legislators (or their successor) within whose district the development is located at the time of application regarding their intent to submit an application. This written notice shall serve to provide a reasonable opportunity to comment on the application. All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application requires notice.

(B) **Additional notice requirements.** If the site for the development is not located within the specific corporate limits of an incorporated town or city, but is within two (2) miles of an incorporated town(s) or city(ies) limits, Applicant must provide the same notice to each such town(s) and city(ies) as if the site was located within the corporate limits of each such town(s) and city(ies). All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application requires notice.

(C) **Publication notice.** Notice of an Applicant's intent to file an Application shall also be published in a newspaper of general circulation in the area wherein the Development will be located. All notice requirements must be satisfied not less than thirty (30) and no more than ninety (90) calendar days prior to submission of an Application. Each application requires notice. The requirements for the publication notice will be in the annual AP.

(2) **Market analysis.** All Applicants must submit third party, independent housing market analyses conforming to the Threshold Criteria set forth in the applicable AP, demonstrating and documenting the status of the market demand for the type and number of housing units proposed to be developed. The market analysis must be prepared no more than twelve (12) months prior to the date Application is filed with OHFA.

(3) **Nonprofit owners.** Applicants proposing Developments under the nonprofit set-aside must demonstrate and document that the Nonprofit owner and/or Nonprofit ownership participant meet the definition of a nonprofit as defined in Section 42h(5)(C) of the Code and these Chapter 36 rules at 330:36-1-4. Applicants for nonprofit set-aside TCAs must demonstrate that the Nonprofit participant:

(A) is at least a minimum of fifty-one percent (51%) co-

general partner, co-managing member, or a controlling stockholder, or can otherwise demonstrate ownership of, or the contractual obligation to acquire a controlling interest in the proposed Development by not later than the date the Development is substantially completed and commences business;

(B) will materially participate, on a regular basis, in the planning and construction of the Development, and in the operation and management of the Development throughout the entire compliance period pursuant to 26 CFR § 1.469;

(C) has a Board of Directors and Officers that are independent from any for-profit Development partner;

(D) is duly authorized to do business within the State; and

(E) has at least one demonstrable year of affordable housing experience.

(4) **Resolution of local support.** Applicants must provide documentation of official local support for the Development by the jurisdiction within which the proposed Development is located at the time of application, i.e. the Local Governing Body. The required documentation must be in the form of a resolution duly adopted by the Local Governing Body, and must be in a form that shall be subject to approval by OHFA. If there are any conditions in the resolution, OHFA may exercise its discretion to contact the governing body to ascertain the potential impact of the conditions.

(5) **Capacity and prior performance.** Each Applicant must demonstrate and document the degree of expertise of Applicant and owner in the use of TCAs and the Development, rehabilitation and/or conversion, management and operation of properties related to the type of the proposed Development. Applicants, Owners, and their Affiliates, including all Development team members, shall be examined in regard to their Placed in Service Developments, and the record of compliance performance within Oklahoma and other states in which the Development team members have developed or are developing affordable housing. The removal as a General Partner may be considered lack of capacity and performance. Applicants with existing Developments may be ineligible for a TCA where OHFA has or receives notice of uncorrected or repeated instance of nonperformance by Applicant, owner, or any of their Affiliates, and may include any of their Development team Instances of non performance may include, but not limited to:

(A) failure to meet and maintain minimum property standards;

(B) failure to meet and maintain any material aspect of a Development as represented in a Development Application;

(C) have been involved in uncured financing defaults, foreclosures, or placement on HUD's list of debarred contractors;

(D) events of material uncorrected non-compliance with any Federal or State assisted housing programs within the prior seven (7) years; or

(E) the appointment of a Receiver; conviction on a felony criminal charge; or bankruptcy within the prior seven (7)

years.

(F) failure to comply with OHFA's requests for information or documentation on any development funded or administered by OHFA.

(6) **Acquisition Credits.** Applicants requesting acquisition Credits must provide an opinion of counsel, in a form satisfactory to OHFA, that the requirements of Code Section 42(d) (2)(B) have been met or a waiver obtained from the IRS. If an existing waiver or waiver to be granted is claimed, copy of the waiver letter or a copy of the letter indicating a waiver will be granted and is forthcoming must be included in the applicant's Development proposal.

(7) **Phase I environmental study.** Applicants must submit a Phase I Environmental Assessment of the Development prepared no more than twelve (12) months prior to the date an Application is filed with OHFA. In lieu of assessment for existing RHS-financed properties to be acquired and rehabilitated, the Applicant and RHS must certify that there are no adverse environmental concerns. Any remediation requirements should be detailed and costs identified in the budget.

(8) **Financial feasibility and viability.** Applicants must demonstrate with their financing that there are firm commitments to the Development's financial feasibility and viability as a qualified low-income housing Development throughout the extended use period. Applicant must demonstrate to OHFA's satisfaction that the Applicant has financing commitments for one hundred percent (100%) of the project's total estimated construction and permanent financing. Commitment letters must include loan amount, interest rate, loan term, debt service coverage ratio (permanent lender), loan amortization period (permanent lender), borrower, loan fees, collateral and conditions precedent to funding. Requirements set out in 36-4-2.2 (b)(c) and (d) are part of the analysis for financial feasibility.

(9) **Readiness to proceed.** Applicants must demonstrate readiness to proceed in a timely manner should they be awarded a TCA. Factors that may be considered regarding Development readiness may include but not be limited to:

(A) site control; and

(B) Applicant must provide preliminary plans or specifications; and

(C) proper zoning for the proposed Development.

(10) **Public Housing Wait Lists.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the local or State public housing authority documents the presence of a client waiting list for affordable housing units in the locale of the proposed development.

(11) **Capital needs assessment.** No allocations for rehabilitation will be made unless preceded by a capital needs assessment performed by a qualified independent third-party (architect, engineer, contractor, Rural Housing Services) which considers the proposed rehabilitation activities to ensure that the proposed improvements plus reserves have a useful life that

meets the full term of affordability based on extended use agreements. The assessment should also demonstrate the need for the rehabilitation work and in the degree proposed. In addition, all rehab developments must include a complete, detailed tenant income audit that identifies all existing tenants and their income. The audit shall separately identify those tenants whose income exceeds applicable income limits.

(12) **Development amenities.** Each Application will be analyzed and evaluated as to commitments made therein for the provision of amenities. Amenities and documentation requirements will be established in the annual AP.

(c) **Selection criteria.** The Selection Criteria shall be set forth in the appropriate AP, and may include, but not necessarily be limited to the following:

(1) **Income targeting.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated therein a commitment to target lower-income populations. Points will be awarded based on the percentage of total AHTC units targeted to persons at or below fifty percent (50%) AMFI to the total number of AHTC units in the project. A sliding scale for points will be established in the annual AP.

(2) **Term of affordability.** Each Application will be analyzed on its ability and evaluated as to any commitments made therein in regard to serving qualified tenants for a period of time longer than the minimum required by the Code. Points will be awarded for an extension of the term of affordability beyond the minimum required by the Code and established in the annual AP.

(3) **Development location and housing characteristics.** Each Application will be analyzed and evaluated as to the geographic location and prevailing market conditions for the proposed Development. Locations and points will be established in the annual AP.

(4) **Development Leverage.** Each Application will be analyzed and evaluated as to the extent to which it results in tangible, cost beneficial investments or contributions to the proposed Development. Leverage shall be considered as the proportion or percentage of leverage resources to total eligible basis. Points for this criterion will be established in the annual AP.

(5) **Community Support.** The extent to which local governments and other community partners commit support for a proposed development will be analyzed. Support must be directly related and of direct value to the proposed project. Eligible evidence of support and points will be established in the annual AP.

(6) **Applicant/Owner Experience.** Each Application will be analyzed and evaluated as to the experience of the Applicant and/or the Development Team in owning and successfully operating Developments in the LIHTC Program. Points available under this criterion will be established in the annual AP.

(7) **Management Experience.** Each Application will be analyzed and evaluated as to managing or providing management for Developments in the LIHTC Program. Points available under this criterion will be established in the annual AP. This evaluation will be based on the experience of the management team members.

Changes in management may not occur after the Reservation without the prior written approval of OHFA.

(8) **Tenant/Special Needs Populations.** Each Application will be analyzed and evaluated as to the extent to which commitments are made therein to serve Special Needs populations. Points available under this criterion will be established in the annual AP and will be based upon a percentage of units dedicated to special needs.

(9) **Tenant populations of individuals with children.** Each Application will be analyzed and evaluated as to the extent to which it is demonstrated that the development will provide amenities and a unit mix conducive to families/individuals with children. Points available under this criterion will be established in the annual AP. To be eligible, the market study must indicate a need for family units.

(10) **Tenant ownership.** Points available to applicants proposing for single family home ownership after the Compliance Period will be established in the annual AP. Applicants must submit a detailed plan which includes projections on maintenance, tenant reserve funds, etc. which will be evaluated for feasibility.

(11) **Preservation of affordable housing units from pre-1990.** Points may be established in the AP for the preservation of affordable housing.

(12) **Energy Efficiency of a development.** Points will be established in the AP to encourage energy efficiency of developments. This may be a separate point category, or it may be combined within another threshold or selection category.

(13) **Historic Nature of a development.** Points will be established in the AP regarding the historic nature of developments. This may be a separate point category, or it may be combined within another threshold or selection category.

(14) **Negative Points.** OHFA Staff will deduct points for records of poor performance. Point deductions will be established in the AP.

(15) **Tie-breaker.** In case there are applications with the same final score in any set-aside, a drawing shall occur at the Board of Trustees meeting in which the applications are being considered for funding. All applications with the same score in any set-aside will be entered in the drawing. The first application drawn, will be funded first, the second application drawn, will be funded next, and so forth until such time as the tax credits have been allocated under the set-aside. Applications not drawn under a set-aside will be placed in the next set-aside in which they qualify in rank score order.

(d) **OHFA discretion.** Notwithstanding the point ranking under the Selection Criteria set forth above under 330:36-4-2.1(c), the OHFA Board of Trustees may in their sole discretion allocate Credits to a project irrespective of its point ranking, if allocation is:

- (1) in compliance with Code Section 42;
- (2) in furtherance of the housing goals set forth herein, in the AP or any formally adopted resolution of the Trustees; and
- (3) determined by the Trustees to be in the interests of the citizens of the State.

330:36-4-2.1. General program requirements and limitations(a) **General.** [Reserved](b) **Developer Fee limitations.** The amount of allowable Developer Fees shall be limited to:(1) **Small developments.** Developer Fees may not exceed eighteen percent (18%) of the Eligible Basis, excluding the Developer Fees.(2) **Large Developments.** Developer Fees may not exceed fifteen percent (15%) of the Eligible Basis, excluding the Developer Fees.

(3) OHFA may, in its sole discretion, increase the Developer Fees allowable in order to create special financing incentives to meet a pressing local affordable housing need. All determinations of allowable Developer Fees shall be made in a manner consistent with the Code, IRS regulations and/or any directives of the Internal Revenue Services at the time of Allocation.

(c) **Contractor Fee limitation.** Allowable Contractor Fees shall be limited to:(1) **Small Developments.** Total allowable Contractor fees may not exceed sixteen percent (16%) of the hard construction costs. Allowable Contractor Fees are further limited as follows:

(A) General requirements may not exceed six percent (6%) of the hard construction costs;

(B) General Overhead may not exceed two percent (2%) of the hard construction costs; and

(C) Builders Profit may not exceed eight percent (8%) of the hard construction costs.

(2) **Large Developments.** Total allowable Contractor fees may not exceed fourteen percent (14%) of the hard construction costs. Allowable Contractor Fees are further limited as follows:

(A) General requirements may not exceed six percent (6%) of the hard construction costs.

(B) General Overhead may not exceed two percent (2%) of the hard construction costs; and

(C) Builders Profit may not exceed six percent (6%) of the hard construction costs.

(d) **Underwriting standards.**(1) **Operating and replacement reserves.**

(A) Minimum operating reserves must equal six months of projected operating expenses plus:

(i) debt service payments and

(ii) annual replacement reserve payments.

(B) Minimum replacement reserves should equal \$250.00 per unit annually for new construction and \$300.00 for rehabilitation developments.

(C) Developer guarantees or letters of Credit may be accepted in lieu of operating reserves, at the discretion of OHFA. The developer must demonstrate financial capacity and liquidity. OHFA will also consider the developer's track record and the number of other guarantees outstanding.

(D) Notwithstanding the foregoing, these underwriting

standards shall not apply if the project is being constructed in accordance with another federal program, such as Rural Housing 515 or 538, and such program provides for sufficient budgeting for operating and replacement reserves.

(2) **Debt service coverage.**

(A) Debt service coverage means the ratio of a property's net operating income to debt service obligations.

(B) The minimum acceptable debt service coverage ratio will be established in the AP.

(3) **Projections.** All projections and pro-formas must contain realistic operating expense and vacancy rate projections consistent with prevailing market conditions.

(4) **Cost limits.** Costs per unit must be realistic and consistent with prevailing market rates. OHFA encourages cost efficient production, but will not give a preference solely for lowest construction costs.

(5) **Minimum hard construction costs per unit for rehabilitations.** No allocations for rehabilitation will be made unless a minimum of \$20,000 in hard construction costs per unit will be expended or at least twenty percent (20%) of eligible basis, whichever is greater.

(6) **Buildings Designated by OHFA to receive increase in credit.** OHFA will allow up to one hundred thirty percent (130%) boost for reasons determined and identified in the annual AP.

(e) **Progress reports.** Progress reports must be filed by the Applicant/Owner beginning with the calendar quarter following the approval of a reservation of Credits until the IRS Form 8609 is issued for a building. Due dates are January 10, April 10, July 10 and October 10. The report must contain, at a minimum, the status of site preparation and/or construction, including the percentage of completion of each building, and costs incurred to date. The report must address any other requirements set forth in a Resolution of the Trustees and/or the Carryover Agreement. Within thirty (30) calendar days after the Certificate of Occupancy is issued for the last building in the project, the Taxpayer must notify OHFA and submit a copy of the Permanent Certificate of Occupancy for each building in the Development. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused Credits.

(f) **Construction time period.** Construction, not including site prep work, must begin within Construction, not including site prep work, must begin within nine (9) months of the last calendar day of the month of the Credit reservation, unless extended for cause by OHFA. Remedies for violation of these provisions include those denoted at 330:36-6-3, including but not limited to return of unused tax Credits.

(g) **Additional requirements.** OHFA may, as it deems necessary in its sole discretion, impose additional requirements or Program limitations on any Applicant, Taxpayer, Owner or Development. Said requirements or limitations may be set forth in a Resolution of the Trustees or in any contract between the Applicant or Owner and OHFA.

(h) **Timeliness and completeness of filings.** Deadlines for filing

Applications will be established in the AP. Should OHFA request additional information, the deadline for filing same with OHFA will be set forth in the letter requesting same. Applicants/Owners must strictly comply with all deadlines and all filings must be complete when filed.

330:36-4-3. Fees

(a) **General.** Application and TCA Fees will be used to support overall OAHTC Program delivery and operation activities. Application fees shall be calculated as follows:

(1) **Application fees.**

(A) for single site or contiguous site Developments consisting of one to four Units, the application fee shall be \$500.00;

(B) for single site or contiguous site Developments consisting of five to fifty Units, the application fee shall be \$1,000.00;

(C) for single site or contiguous site Developments consisting of fifty one to one hundred units, the application fee shall be \$2,000.00;

(D) for single site or contiguous site Developments consisting of over one hundred units, the application fee shall be \$3,000.00;

(E) for scattered sites, the application fee shall be \$500.00 per site, up to a maximum of \$3,000.00.

(F) For non-profit sponsored Developments the application fee shall be \$500.00.

(2) **Reservation fees.** A non-refundable Reservation fee of two percent (2%) of the reservation amount is due within fourteen (14) calendar days of notification from OHFA of the approval of a Reservation.

(3) **Allocation fee.** An Allocation fee shall be paid in an amount equal to eight percent (8%) of the total TCA, but in any event not less than \$1,000.00. The Allocation fee must accompany the Final Allocation or Carryover Allocation request. A Carryover Allocation Agreement will not be executed, nor will Form 8609(s) be issued unless this fee has been received by OHFA.

(4) **Processing fee.** A processing fee of three quarters of one percent (.75%) of the TCA must accompany the request for a final Allocation. A service fee of \$100.00 must accompany the Request for Final Allocation of Credit. Form 8609(s) will not be issued unless this fee has been received by OHFA.

(5) **Regulatory Agreement filing fee.** Upon approval of a final Allocation, an executed Regulatory Agreement must be submitted to OHFA and be accompanied by a check payable to the County Clerk of the county or counties in which the Development is located. The check or checks shall be in an amount sufficient to cover the filing fees of that county(ies).

(6) **Compliance monitoring fees.** In addition to the documentation required by OHFA, an annual compliance monitoring fee shall be paid to OHFA. The compliance fee is payable on or before January 28th for each year during the compliance period

and extended use period subject to annual adjustment. If the Development includes scattered sites, a compliance monitoring fee for each site shall be paid to OHFA. If the Compliance fee is not paid within thirty (30) calendar days of the due date, then a Late Fee will be assessed. The Late Fee is equal to ten percent (10%) of the Compliance fee. Failure to remit timely payment of compliance monitoring fees may result in the filing by OHFA of a lien against the Development. The compliance monitoring fee shall be computed as follows:

(A) For Developments financed by RHS under the Section 515 or by taxable or tax-exempt bonds (and otherwise qualify under the Code) where an agreement has been entered into between OHFA and RHS or the bond issuer wherein the RHS or bond issuer agrees to provide OHFA with the required information respecting the income and rent of the tenants in the Development, the fee shall be \$210.00 per Development per year, plus \$9.00 per OAHTC unit per year within any building within the Development;

(B) For developments where no agreement has been entered into between OHFA and RHS or the bond issuer wherein RHS or the bond issuer agrees to provide OHFA with the required information respecting the income and rent of tenants-the fee shall be \$350.00 per Development per year, plus \$19.00 per OAHTC unit per year within any building within the Development.

(C) For single site or contiguous site Developments of four units or less-the fee shall be \$275.00 per Development per year.

(D) For all other Developments the fee shall be \$350.00 per Development, plus \$19.00 per OAHTC unit per year within any building within the Development.

(7) **Additional monitoring fees.** In the event of noncompliance with the Code or Regulatory Agreement or these Chapter 36 Rules requiring OHFA to conduct an examination of the owner, any building within the Development or any documentation to verify correction of said noncompliance, OHFA shall be reimbursed its costs by the Development or owner for such an examination, including an hourly rate for the OHFA examiner, not to exceed \$30.00 per hour, plus any and all actual travel, lodging and per diem expenses of such examiner. Such reimbursement of expenses and costs shall be paid to OHFA within ten (10) calendar days of receipt of OHFA's statement of same.

(8) **Ownership/General Partner transfer fee.** In the event that the owner submits a request for approval of a transfer of ownership/general partner of the Development or any of the Buildings therein, a fee of three percent (3%) of the amount of annual tax Credit allocation, but no less than \$2,500.00, shall be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be non-refundable.

(9) **Management Transfer fees.** In the event that the owner submits a request for approval of a transfer of the management company of the Development, a \$500.00 fee per development shall

be imposed to cover OHFA's costs of handling the request. This fee shall accompany the request and shall be non-refundable.

(10) **Notice costs.** All costs of copies and postage costs incurred by OHFA in connection with the notification provisions contained in these Chapter 36 Rules at 330:36-2-11, Review Report at 330:36-2-13, and any occasion when OHFA incurs extra postage costs to accommodate the Applicant, must be reimbursed by the Owner within ten (10) calendar days of OHFA's statement of same. Failure to do so may result in the rejection of consideration of the Application.

(11) **Copies of Rules.** Copies of these Chapter 36 Rules will be provided at a cost of \$10.00 per copy, but can be accessed via OHFA's website, www.ohfa.org.

(12) **Compliance Workshops.** A cost sufficient to defray the total cost of the presentation will be charged for attendance at the Compliance Workshop.

(13) **Qualified Contract fees.** Submission deadlines for these fees will be established in the Qualified Contracts Application materials. Preliminary Application (PA) fee shall be \$1,500.00. Additionally, the Qualified Contract Application (QCA) fee shall be \$12,500.00 plus any third party fees and expenses incurred by OHFA and not paid directly by the applicant. Third party fees and expenses include but are not limited to appraisals for the entire property, market study, title reports, environmental reports, accountants review and reports, and legal services. This is not an all inclusive listing. Any third party fees and expenses incurred by OHFA will be identified and applicants will receive notice of the charge and reason.

(14) **Late fees.** The Form 8609(s) will not be issued unless these fees have been received by OHFA.

(A) **Progress reports.** Progress reports as required in 36-4-2.2 when filed late will be assessed a late fee of \$10.00 per calendar day, per each late report.

(B) **Carryover Allocations.** Owners who fail to timely file all requirements in the AP as to Agreement, Application, ten percent (10%) cost certifications, opinions and documents shall incur \$100.00 late fee per calendar day. (C) **Final Allocations.** Owners who fail to timely file all requirements in the AP as to the Regulatory Agreement, Application, cost certifications, opinions and documents shall incur \$100.00 late fee per calendar day.

(D) **Transfer Documents.** Owners who fail to timely file all requirements in regard to the transfer of ownership or general partnership interest (or other type of entity) may incur \$25.00 late fee per calendar day.

(E) **Acknowledgment of Placed in Service Form.** Owners who fail to timely file an Acknowledgment of Placed In Service Form in accordance to timelines established in the AP shall incur \$10 late fee per calendar day.

SUBCHAPTER 6. PROGRAM ADMINISTRATION

330:36-6-1. Program violations and revocation.

(a) The following are violations of OAHTC Program policies and procedures and these OAHTC Program Rules:

(1) The filing of false information in an Application and/or a Development report;

(2) Failure of an Applicant or owner, as the case may be, to satisfy any of the requirements of the Code, applicable state or federal statutes, rules or regulations, these OAHTC Program Rules, or any requirements contained in the applicable AP, or any commitments made in the Application upon which the award of a TCA was based;

(3) Breach of any of the terms, conditions, obligations, covenants, warranties, or representations of the owner or Applicant contained in the Regulatory Agreement and/or the Carryover Allocation Agreement or the breach of any terms conditions, obligations or requirements set forth in any Resolution of the Trustees pertaining to the Applicant/Owner or the Development;

(4) Notice by OHFA to the owner that significant corrective actions are necessary to protect the integrity of the Development and that such corrective actions have not been, or can not be, effected within a reasonable time, in the judgment of OHFA staff;

(5) An administrative or judicial determination that the Applicant or owner has committed fraud, waste, or mismanagement in any current or prior State or federally funded project;

(6) The housing of a person(s) convicted of a felony or engaged in any illegal or criminal activities as set forth in this subsection, if the owner, or managers of the Development, or any of their Affiliates, have knowledge of or about, or by reasonable inquiry should have known of same. The prohibition on housing shall apply to any person who:

(A) is currently engaged in, has been convicted of using, distributing, or manufacturing methamphetamine or has engaged in Drug Related Criminal Activity. Housing of such person shall be prohibited for a period of three (3) years from the date of the conviction, or end of the incarceration, whichever is most recent.

(B) is currently engaged in, has been convicted of Violent Criminal Activity. Housing of such person shall be prohibited for a period of ten (10) years from the date of the conviction, or end of the incarceration, whichever is most recent.

(C) has been convicted of any other felonious activities other than Drug Related Criminal Activity or Violent Criminal Activity. Housing of such person shall be prohibited for a period of three (3) years from the date of the conviction or end of the incarceration, whichever is most recent.

(D) is subject to a lifetime registration requirement under a Federal or State sex offender registration program.

(E) is a sex offender, not subject to lifetime registration. Housing of such person shall be prohibited for a period of

ten (10) years from the date of the arrest, conviction, or end of incarceration (whichever is later) or the period of required registration as a sex offender, whichever is greater.

(7) The prohibition on the housing of a convicted felon shall not apply to qualified tenants of Transitional Housing, except that the housing of a person in any Transitional Housing shall be prohibited if said person:

(A) is subject to a lifetime registration requirement under a Federal or State sex offender registration program, or

(B) is currently engaged in or has been convicted of a violent felony in the last three (3) years.

(8) From and after the date of the filing of the Application, failure to notify OHFA of any material changes effecting the proposed development, including, but not limited to, modifications to any representations contained in the Application, any amendments or modifications of the financing plan, syndicators or equity partners or any other Threshold requirement and/or changes in Development Team Members, contractors, property managers, and the like. Notification must be filed with OHFA not less than sixty (60) calendar days prior to the proposed change. Approval by the OHFA Board of Trustees is required for any changes or amendments involving the ownership or control of the Development or the Owner after the Application is filed. This would; include, but not be limited to, changes or transfers of the Development, changes or modifications of the ownership or composition of the general partner entity (i.e. addition or removal of members, partners, stockholders, etc.), any addition, substitution, withdrawal or removal of any general partner. Other amendments may be handled administratively by staff, although staff reserves the right to refer any amendments to the OHFA Board of Trustees for their consideration; or

(9) Failure to submit reports including but not limited to the timely filing of progress reports, updates, compliance reports, etc., and failure to provide OHFA with any additional information requested by OHFA within the period set forth in any request for information. Failure to pay fees when due. If payment is returned for insufficient funds, it will be deemed nonpayment and the amount to defray bank costs will be due.

(10) Little or no progress has been achieved with previous tax Credit reservations approved for the Applicant or Developer or any of the Principals of either. This would include, but not be limited to: failure to meet the minimum carryover allocation requirements resulting in the return of Credits; failure to place a development in service within twenty-four (24) months receiving the carryover allocation; involvement of a foreclosure or deed-in-lieu of foreclosure within the past seven (7) years.

(b) Failure to follow all required procedures throughout the allocation process could jeopardize the final allocation or result in housing Credits being revoked.

330:36-6-3. Corrective and remedial actions

(a) Upon a determination by OHFA staff that a violation has occurred during the Application stages or prior to the filing of the Regulatory Agreement, OHFA may take any one or more of the following actions when the cited violations are not corrected in a timely manner:

- (1) Condition regulatory agreements;
- (2) Withhold allocations of tax Credits;
- (3) Reduce the total amount of the tax Credit award;
- (4) Require the return of unused tax Credits;
- (5) Deny future program Applications and participation for a specified period of time as determined by OHFA;
- (6) Indefinitely suspend from program participation;
- (7) File an action for specific performance; and/or
- (8) Notify the IRS.

(b) Additionally, OHFA shall have the right, upon discovery of facts or statements indicating possible program violations by an Applicant or owner in regard to a Development, or a proposed Development or a pending Application, or a pending TCA, to request and obtain information regarding:

- (1) The administrative, planning, budgeting, management and evaluation functions, actions being taken to correct or remove the cause of the program violation(s);
- (2) Any activities by an Applicant and/or owner, or by an Affiliate of either of them that are, or might be in violation or breach of the commitments made in the Application or that are, or might be, in violation of applicable laws, these Rules, the applicable AP, and/or the applicable Carryover Agreement and/or the applicable Regulatory Agreement;
- (3) The ability of the Applicant and/or owner to fulfill the commitments made to OHFA in the Application and/or the applicable Carryover Agreement and/or the applicable Regulatory Agreement, in a timely manner; and
- (4) Progress schedules for completing and/or performing the commitments made to OHFA in the Application and/or the applicable Carryover Agreement and/or the Regulatory Agreement in a timely manner.

(c) Prior to OHFA taking any corrective and/or remedial actions, OHFA, may, in its sole discretion, issue a notice of a show cause hearing. The Applicant and/or owner shall have thirty (30) business days to appear and show cause as to why corrective and/or remedial actions should not be taken. This language shall not be construed as a limitation on the compliance monitoring and reporting requirements of the Code and these Chapter 36 Rules.

330:36-6-5. Applicant and/or owner responsibilities

(a) An Applicant and/or owner under the OAHTC Program shall be responsible for:

- (1) Taking all action necessary to enforce the terms of the Regulatory Agreement against any private or public owner that fails to comply with applicable provisions of the Regulatory Agreement or any subcontract or documents resulting from it, and to recover on behalf of OHFA, all costs and expenses incurred by or on behalf of OHFA. Nothing in this subsection shall restrict OHFA's right to independently enforce the terms

of the commitments made to OHFA in the Application and/or the Regulatory Agreement or in any subcontracts or documents resulting from either of them, or to recover any sums that may become due to OHFA as the result of a breach of any of the commitments made to OHFA in the Application and/or the Regulatory Agreement, or in any such subcontracts or documents.

(2) Complying with all applicable provisions of the Code, state and federal regulations, guidelines, circulars, rulings and notices, these Rules, the applicable AP, the Application, the Regulatory Agreement between the Applicant and/or Owner, and/or in any subcontracts or documents resulting from either of them, and OHFA or other Program requirements that may be released by the Internal Revenue Service or OHFA from time to time.

(3) Maintaining records and accounts, including, but not limited to, property, personnel, financial and tenant records that properly document and account for all Development funds and compliance with the tenant income certification requirements of the Code, these Rules, the applicable AP, and the Application and the Regulatory Agreement. All records required by the Code or 26 CFR1.42-5, as presently effective or as may be amended in the future, must be kept and retained by the Owner. Additional requirements of OHFA respecting said records may be included in the Regulatory Agreement. OHFA may require specific types and forms of records. All such records and accounts shall be made available upon request by OHFA for the purpose of inspection and use in carrying out its responsibilities for administration of the tax Credits.

(4) Retaining all books, documents, papers, records, and other materials involving all activities and transactions related to the Owner's commitments to OHFA found in the Application and in the Regulatory Agreement, as required by the Code, federal regulations, the AP, the Application and the Regulatory Agreement.

(b) OHFA may require the Applicant and/or Owner to provide special narrative and financial reports related to the elements of a written agreement in the forms and at such times as may be necessary or required by OHFA.

(c) OHFA shall have the right to perform as many audits of any Development, from time to time, in the complete discretion of OHFA, as OHFA deems necessary or appropriate to discharge its compliance duties to the IRS in regard to each Development for which TCAs have been awarded, at least through the end of the compliance period and extended use period of the buildings and units in the Development. Audits may include physical inspection of any building in the Development, as well as a review of the records described in this subchapter. The cost of any such audit shall be borne by the Applicant and/or Owner. The audit and inspection provisions of this subsection are in addition to any inspection of OAHTC certifications, supporting documentation, or inspection of records performed pursuant to annual compliance review.

330:36-6-7. OHFA monitoring procedures

(a) **General.** Section 42(m)(1)(B)(iii) of the Code mandates that state housing Credit agencies monitor all placed in service tax Credit projects for compliance with the provisions of Section 42. The Code also mandates that the Internal Revenue Service be notified, by the state housing agencies, of any instances of noncompliance, this includes failure to comply with the Code and federal regulations and these Chapter 36 Rules, as well as failure to pay all compliance fees in a timely manner. OHFA will also monitor for compliance with the Regulatory Agreement (Land Use Restriction Agreement) provisions which contain additional owner commitments made to secure points in the project selection process, e.g. additional low-income units or an extended low-income use period. OHFA has assembled and will make available to the development owners, a Compliance Manual explaining the OAHTC monitoring process in detail. An owner representative and a management agent representative will be required to successfully complete a compliance training session conducted by OHFA or approved by OHFA and submit proof thereof with the first Quarterly report. OHFA will monitor the documents and certifications set forth in 330:36-6-7(b) and (c) for compliance with the Code.

(b) **Record keeping and record retention provisions.**

(1) The owner of a low-income housing project is required to keep records for each qualified low-income building in the project showing:

(A) The total number of residential 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 low-income units;

(C) The rents charged on each residential rental unit in the building (including any utility allowances);

(D) The number of occupants in each low-income unit;

(E) The low-income unit vacancies in the building and information that shows when, and to whom the next available units were rented;

(F) The initial income certification of each low-income tenant per unit, and any additional recertification that may be required;

(G) Documentation to support each low-income tenant's income certification;

(H) The eligible basis and qualified basis of the building at the end of the first year of the Credit period;

(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 project); and

(J) Copies of all correspondence with the IRS.

(2) The owner is required to retain the records described in this section for each building in the project for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the

first year of the Credit period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

(c) **Certification and review provisions.**

(1) Between the placed in service date of a building and the submission of an application for a final allocation of Credits, and prior to the issuance of an 8609, OHFA may physically inspect the property. An on-site review will again be conducted within the following year as described in 330:36-6-7 (c)(6) of these Rules.

(2) In accordance with Section 42(1)(1), following the close of the first taxable year in the Credit period, the owner must certify to the Secretary of the Treasury:

(i) the taxable year in which such building was placed in service,

(ii) the adjusted basis and eligible basis as of the close of the first year of the Credit period,

(iii) the maximum applicable percentage and qualified basis, and

(iv) the election made for the low-income targeting threshold.

(v) This certification is accomplished by completing Part II of the 8609(s). A copy of the completed 8609(s) must also be submitted to OHFA. The due date for submission is May 10, or as extended by the Service or Staff, of the year due to The Service for the first Credit year.

(3) Owners must prepare and submit a quarterly report beginning with the first full calendar quarter after the last building is Placed in Service, and for the subsequent three quarters. This report must be accompanied by copies of the Tenant Income Certifications for each tenant and new move-ins for the appropriate quarter. If a project is determined not to be in compliance with Program requirements or there is indication of possible noncompliance, OHFA, at its discretion, may require reports each quarter until compliance is demonstrated.

(4) The owner of a low-income housing project is required to certify annually, in a form prescribed by OHFA, that for the preceding 12-month period:

(A) The project met the requirements of the 20-50 or 40-60 test under Section 42(g)(I) of the Code, whichever minimum set-aside is applicable to the project, and, if the applicable to the project, the 15-40 test under Section 42(g)(4) for "deep rent skewed" projects;

(B) There was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project, or that there was a change and a description of the change;

(C) The owner has received an income certification from each low-income tenant and documentation to support that certification;

(D) Each low-income unit in the project was rent-restricted under Section 42(g)(2);

- (E) All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless);
- (F) Each building in the project was 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;
- (G) There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or that there was a change, and the nature of that change;
- (H) All tenant facilities included in eligible basis under Section 42(d) of any building in the project, such as swimming pool, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;
- (I) If a low-income unit in the project became vacant during the year, reasonable attempts were, or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were, or will be rented to tenants not having a qualifying income;
- (J) If the income of the tenant of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying income;
- (K) An extended low-income housing commitment, as described in Section 42 (h)(6), was in effect;
- (L) The project meets the additional requirements contained in the Land Use Restriction Agreements;
- (M) There was no change in the Owner entity (for example, transfer of general partnership interest);
- (N) If the owner received its Credit allocation from a portion of the State's ceiling set-aside for projects involving "qualified non-profit organizations" under Section 42(h)(5) of the Code, the non-profit organization has materially participated in the operation if the development (within the meaning of CFR § 1.469) and complete the Non-Profit Addendum or other form prescribed by OHFA;
- (O) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 361a(a)(1), or an adverse judgment from federal court; and
- (P) An extended low-income housing commitment as described in Section 42(h)(6) was in effect, that an owner cannot refuse to lease a unit in a project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s.
- (Q) Collect data required by HUD in a form prescribed by

OHFA. In no way will the data collection be in violation of Fair Housing.

(5) OHFA will review the owner certifications submitted pursuant to 330:36-6-7(c)(4), for compliance with the requirements of Section 42 of the Code.

(6) OHFA must and will conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service, and for at least twenty (20) percent of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

(7) At least once every three (3) years through the extended use period, OHFA must conduct on-site inspections of all buildings in the project and, for at least twenty percent (20%) of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

(8) The certifications and reviews of paragraphs 330:36-6-7(c)(2) and (c)(4) of these Chapter 36 Rules are required to be made at least annually until the end of the extended use period, and the certifications are to be made under penalty of perjury.

(9) The owner is required to provide to OHFA, for the first Credit year, a copy of the completed Part II 8609, 8609 Schedule A and Form 8586 that is submitted to the Internal Revenue Service.

(10) The owner is required to provide to OHFA, as it occurs, copies of all correspondence with the Internal Revenue Service.

(d) **Auditing provisions.** OHFA has the right to perform an audit of any low-income housing project during the term of the Land Use Restriction Agreement. An audit includes physical inspection of any building in the project, as well as a review of the records described in 330:36-6-7(c)(1) of these Chapter 36 Rules. The auditing provision of this paragraph is in addition to any inspection of low-income certifications and documentation under 330:36-6-7(c)(7) of this Chapter 36 Rules.

(e) **Notification of non-compliance provisions.**

(1) OHFA will provide prompt written notice to the owner of a low-income housing project if OHFA does not receive the certification described in 330:36-6-7(c)(4) of these Chapter 36, or does not receive, or is not permitted to inspect, the tenant income certification supporting documentation and rent records, or discovers on audit, inspection review, or in some other manner, that the project is not in compliance with the Code or these Chapter 36 rules. The owner shall have a period of time, not to exceed thirty (30) calendar days, from the date of such notice (the "Correction Period") to supply any missing certifications and bring the project into compliance. OHFA may extend, in its own discretion, the Correction Period for up to an additional thirty (30) calendar days for good cause.

(2) OHFA must file IRS Form 8823 Report of Noncompliance with the Internal Revenue Service no later than forty-five (45) calendar days after the end of the Correction Period whether or not the noncompliance or failure to certify is corrected. OHFA will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is an event of noncompliance that must be reported under this paragraph.

SUBCHAPTER 8. QUALIFIED CONTRACT

330:36-8-1. Purpose.

Pursuant to 42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the owner of a LIHTC Development can request OHFA as the allocating agency to find a buyer at the Qualified Contract Price (QCP). If a buyer cannot be located within one year, the extended use commitment will terminate. This process provides the procedures for the submittal and review of the qualified contract requests.

330:36-8-2. [RESERVED]

330:36-8-3. Authority.

In the Omnibus Budget Reconciliation Act of 1989 (1989 Act), Congress modified the LIHTC Program by creating an Extended Use Period which lengthened the affordability period of Credit Developments from 15 years to 30 years. However, the 1989 Act also provided an option for owners to exit the LIHTC Program at the end of the 15-year Compliance Period by requesting that the state allocating agency either purchase the Development or assign the agency's purchase right to another entity for a formula price pursuant to a "Qualified Contract".

330:36-8-4. [RESERVED]

330:36-8-5. Policies and Procedures

(a) LIHTC Developments that received an allocation of Credits in 1990 or subsequent years are eligible to submit a Preliminary Application (QCPA) any time after the end of year 14 of the Compliance Period. This is available unless the owner voluntarily waives it in the Regulatory Agreement.

(b) OHFA will develop a Qualified Contract application process to administer requests from eligible Owners for a Qualified Contract pursuant to Code Section 42(h)(6)(E)(i)(II).

(c) In keeping with the clear purpose of IRS Code Section 42, OHFA will resolve every case of doubt or interpretation in determining the QCP, both with regard to the overall process and for particular properties, in favor of a lower value.

330:36-8-6. [RESERVED]

330:36-8-7. Eligibility

(a) In determining the eligibility of a Development with multiple Allocations or Credit periods, OHFA will only consider the last Allocation. Owners may not submit a QCPA or QCA until after the 14th year of the Compliance Period:

(1) for the last Building placed in service (Developments with buildings that were placed in service in different years), or

(2) for the last Allocation to the Development or any Building therein (Developments with multiple Allocations).

(b) OHFA will not consider a QCA until the owner secures a complete, unconditional waiver of all purchase options, including a nonprofit general partner's right of first refusal.

(c) Properties that do not meet the basic physical compliance standards that are (or would be) necessary to claim some or all of the Allocation are ineligible for consideration. Owners must correct all such compliance issues or violations prior to submitting a QCA.

330:36-8-8. [RESERVED]**330:36-8-9. Three-year Period**

(a) If OHFA fails to present a QC before the expiration of the 1YP as described herein, the Development will remain subject to the Three-Year Period requirements of Code Section 42(h)(6)(E)(ii).

(b) The Three-Year period will commence with the recording of a Release of the Regulatory Agreement.

(c) During the Three-Year Period the owner may not evict or terminate a tenancy of an existing tenant of any low-income unit except for good cause. During the Three-Year Period the owner may not increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code.

330:36-8-10. [RESERVED]**330:36-8-11. Qualified Contract**

(a) Under IRC §42(h)(6)(E)(i)(II), OHFA's only obligation is to present to the owner a bona fide Qualified Contract to acquire the Development for the Qualified Contract Price. There is no requirement in the IRS Code that the prospective buyer actually purchase the Development. Whether or not the Owner and the prospective buyer execute a contract and close the transaction is beyond the responsibilities and control of OHFA.

(b) Presentation of a Qualified Contract by OHFA terminates any future possibility of terminating the Extended Use Period set forth in the Regulatory Agreement whether or not the Qualified Contract is executed and the transaction close.