

# NEBRASKA INVESTMENT FINANCE AUTHORITY LOW-INCOME HOUSING TAX CREDIT PROGRAM INFORMATION GUIDE

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## **PURPOSE FOR THIS GUIDE**

This guide was created to provide persons interested in producing affordable housing with a general overview of the low-income housing tax credit (the "LIHTC") program. We hope that by thoroughly reviewing this information guide, you will gain a further understanding of the LIHTC rules, regulations and requirements and how this program may benefit you in the creation of affordable rental housing.

Whenever possible, Nebraska Investment Finance Authority ("NIFA") will provide a cite from the Internal Revenue Code (the "Code") or supplemental notices as the support for the discussion at hand. It is important to note that NIFA, through this information guide, does not represent that information presented could be considered as an opinion of the Code and how it might relate to any particular property. Opinions and/or consultations on the Code and its relationship to a particular real estate transaction need to be sought from qualified sources.

## **WHAT ARE LIHTCS?**

The LIHTC program was created out of the Tax Reform Act of 1986, and was first utilized by the real estate development community during the calendar year of 1987. Section 42 of the Code of 1986, as amended, is the federal law that governs the LIHTC program.

The LIHTC program is one means of directing private capital towards the creation of affordable rental housing. The LIHTCs provide developers of low-income rental housing with a benefit that may be used to offset their federal tax liability in exchange for the production of affordable rental housing.

The amount of LIHTCs a project owner may be eligible for is directly related to the amount of qualified development costs they incur and the percentage of low-income units within a development that meet the applicable federal requirements for both tenant income and rent.

## **HOW CAN LIHTCS BENEFIT THE PROJECT OWNER?**

Under the Code, a credit is a dollar-for-dollar reduction in the tax liability or tax bill of the property owner or investor. (It is important to note that only the owners of a LIHTC property may utilize the benefits of the LIHTCs over time.) A credit is subtracted after the amount of tax is calculated. In this form, a credit differs from a deduction or adjustment to income, which are subtracted from income before the tax rate is applied and the amount of taxes is calculated. The use of LIHTCs can be limited by the application of the passive loss provisions and other restrictions from the Internal Revenue Service. Questions concerning an individual taxpayer's ability to claim LIHTCs or the amount that they may utilize during any given tax year should be directed to a qualified tax consultant.

Conversely, some forms of corporations may be able to utilize an unlimited amount of LIHTCs to

offset their own federal tax liability. Due to the fact that project owners typically cannot use all of the LIHTCs they earn on a project against their own tax liability, the LIHTCs awarded to a low income project will usually not be useful unless outside investors acquire ownership interests in the project. The term syndication is used to describe the process of structuring the financial arrangements and securing the investors whom will join in a partnership and own the project.

Through syndication a limited partnership or limited liability company is created whereby the limited partners or investor members, respectively, exchange initial equity for the benefits of the LIHTCs and possible residual cash flow from the project's operations over time. These syndications may be created by using either individual taxpayers as the limited partner or member or by obtaining equity capital from a single corporate sponsor.

**HISTORY AND CURRENT STATUS OF THE LIHTC PROGRAM**

NIFA has provided low-income housing LIHTCs for approximately **303** housing projects representing over **6,695** affordable housing units in **61** Nebraska Counties, since the inception of the program in 1987, through 2001.

Through the Revenue Reconciliation Act of 1993, enacted on August 10, 1993, the Low-Income Housing Tax Credit program was permanently extended.

**WHAT MUST AN APPLICANT DO TO QUALIFY FOR LIHTCS?**

The first and most primary requirement in order to be considered for LIHTCs in the State of Nebraska is that a project owner must complete an application and submit it to NIFA for consideration. NIFA is the only entity in the State of Nebraska, which has the authority to allocate LIHTCs under this program.

In order to be considered for LIHTCs, the proposed property must undergo new construction, rehabilitation, or acquisition and rehabilitation. The minimum requirements necessary to qualify any building for substantial rehabilitation under the LIHTC program are referenced in Section 42(e)(3) of the Code, and are also provided below:

- 1. --the expenditures are allocable to one or more low-income units or substantially benefit such units; and
- 2. --the amount of such expenditure over any 24-month period must be the greatest of either 10 percent of the adjusted basis of the building  
**or**  
--the qualified basis, when divided by the number of low-income units, in the building, is \$3,000 or more.

The procedure for calculating the amount of LIHTCs potentially available to a project will be covered in

detail later in this information guide.

## WHAT ARE THE REQUIREMENTS TO QUALIFY AS A LOW INCOME HOUSING PROJECT?

Each development must include a minimum percentage of units to be set aside for eligible low-income tenants. The rent charged on these set-aside units must be restricted.

Pursuant to Section 42(g)(1) of the Code, a qualified low-income housing project means any project for residential rental occupancy if the project meets the requirement of either:

1. 20 percent or more of the residential units in such project are both rent restricted and occupied by individuals whose income is 50 percent or less of area median gross income\*; or
2. 40 percent or more of the residential units in such project are both rent restricted and occupied by individuals whose income is 60 percent or less of area median gross income\*.

\* For purposes of this determination, the median income tables as established on an annual basis by the U.S. Department of Housing and Urban Development, will be utilized.

It is important to note that once an election is made, it will be irrevocable. LIHTCs may only be claimed on the units that have been set-aside for participation under this program. It is possible for project owners to set aside 100% of any project for consideration under the LIHTC program and in doing so claim the maximum amount of LIHTCs eligible for the development.

As stated above, the units that are to be set-aside under this program will also be required to be rent restricted. The specific Code citing that pertains to rent restrictions can be found in Section 42(g)(2) of the Code. A residential unit is considered rent restricted if the gross rent with respect to such units does not exceed 30 percent of the imputed income limitation applicable to such unit.

## LIHTC PERIOD, COMPLIANCE PERIOD, AND EXTENDED LOW INCOME HOUSING COMMITMENT

The following time periods will apply to any project owner that utilizes LIHTCs under Section 42 of the Code:

**LIHTC Period** - The LIHTCs that are allocated to any project are eligible to be claimed in an equal amount for a period not to exceed 10 years (Section 42(f)(1) of the Code).

**Compliance Period** - The property must remain in compliance with the set-aside and rent restriction requirements, as discussed above, for a period of not less than 15 years from the first taxable year of the credit period (Section 42(i)(1) of the Code).

**Extended Low Income Housing Commitment** - No LIHTCs will be allocated to a building unless an extended low-income housing commitment between the project owner and NIFA is in effect. The requirements that must be met by this commitment are set forth in Section 42(h)(6) of the Code. The period that is to be covered by the extended low income housing commitment, for purposes of the State of

Nebraska, will be 30 years from the close of the compliance period (Section 42(h)(6)(D) of the Code). Therefore, the project will be required to maintain its affordable housing characteristics for a period of **45 years**. There are, however, two provisions for the early release of the extended low-income housing commitment, each of which is discussed below:

1. Pursuant to Section 42(h)(6)(E)(i)(I) of the Code, the extended low-income housing commitment shall terminate on the date the project is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary of the Treasury determines that such acquisition is part of an arrangement with the taxpayer, a purpose of which is to terminate the extended use period. However, under the preceding provision, the project owner may not evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit, or increase the gross rent with respect to such unit that is not otherwise permitted under the LIHTC program, for a period of not less than three years. The citing which establishes this requirement may be found in Section 42(h)(6)(E)(ii) of the Code.
2. Pursuant to Section 42(h)(6)(E)(i)(II) of the Code, if at the close of the 14th year of the compliance period the project owner provides NIFA with a written request to find a purchaser to acquire their interest in the low-income portion of the building. NIFA will then be given a period of one year to find such a purchaser and offer the property at a predetermined purchase price. If no such purchaser comes forward to acquire the low-income portion of the property by the end of the one-year period, then the extended low-income housing commitment will be released. The specific Code references pertaining to this process may be found in Sections 42(h)(6)(F), (G), (H), and (I). However, pursuant to Section 5 of the Land Use Restriction Agreement, the project owner waives the early release under this provision.

#### **HOW DOES AN APPLICANT FILE FOR THE LIHTCS?**

In order for a project to be considered for LIHTCs, an application must be presented to NIFA in conformance with the NIFA Low Income Housing Tax Credit Allocation Plan and Application Forms during a published acceptance cycle. All application cycles are published in the NIFA allocation plan. Additionally, projects must conform to the requirements of Section 42 of the Code in order to be considered for LIHTCs. If a certain project does not meet the requirements of Section 42 of the Code, then NIFA will reject the application. The allocation plan and application forms that contain the necessary information for the filing of a LIHTC application can be obtained from NIFA.

In 2002, NIFA will utilize set-aside categories for the allocation of LIHTCs. The actual set-aside categories and percentages associated with each are detailed in the 2002-allocation plan. Projects will be considered on a descending order based upon total points awarded by NIFA for both threshold and selection criteria. Applications will be prioritized against the other applications received during the published acceptance cycle.

#### **CALCULATION OF THE LIHTC AMOUNT**

Probably the most common mistake in filing an application is the calculation of the maximum LIHTC amount. In attempting to address this issue, NIFA will incorporate actual application pages to further demonstrate the method of calculating the LIHTC.

In conjunction with the determination of the maximum eligible LIHTC amount for any particular development, NIFA will be reviewing the application for the feasibility of the proposed property and its potential to remain a viable low-income housing development throughout the compliance period. These issues also enter into the final decision of NIFA concerning the prospects of allocating LIHTCs to any development.

In determining the maximum amount of LIHTCs that a project may receive, NIFA will utilize three basic approaches. The first approach takes into consideration the total qualified basis attributable to the property in question. Basically, qualified basis is the amount of depreciable capital improvements to be made to the property during the development process multiplied by the applicable fraction which is equal to the lesser of the percentage of units set-aside for occupancy by low-income tenants under this program or the percentage of floor space attributable to the low-income set-aside units. A more in-depth discussion pertaining to the applicable fraction will be provided later in this guide.

It is important to note that those applicants who do not wish to set-aside 100 percent of their available units for occupancy by low-income tenants under this program do not miss the applicable fraction requirement, as this factor must be adhered to in the final determination of the maximum LIHTC amount.

The second approach to determining the maximum level of LIHTCs that will be allowed for any development is commonly referred to as the Equity/Funding Gap. Under this analysis, NIFA will analyze the total development costs associated with the creation of affordable housing. NIFA will then analyze the total sources of funding (project financing) to be obtained to meet these development costs. The resulting difference between the cost of development and available project financing is the Equity/Funding Gap. After the Equity/Funding Gap has been determined, NIFA will then calculate the amount of LIHTCs that will need to be provided during the credit period in order to satisfy this gap.

The final approach that NIFA will utilize is composed of the amount of LIHTCs requested by the applicant. The concept behind this approach is for NIFA not to blindly provide the project owner with more LIHTCs than he/she requested in the first place.

Upon reaching a final determination under each of the above listed three approaches, NIFA will then select that approach that is the lowest in terms of LIHTC amount.

## **QUALIFIED BASIS DETERMINATION**

In providing a demonstration of how to calculate the maximum amount of credits based upon the qualified basis approach, NIFA will utilize the example of the acquisition and rehabilitation of a rental housing project.

Under this example, NIFA is assuming that the property was acquired for \$1.25 million and required

\$1 million in subsequent rehabilitation. The following is a "walk through" process for completing the Project Cost Schedule, as it appears within the application form. Those sections of the Project Cost Schedule that are crossed out (XXXXXXXXXX) means that no qualified basis is allowable for that particular cost category under either the acquisition or new construction/rehabilitation components.

Part A of the Project Cost Schedule pertains to the cost to acquire the land and buildings, which will comprise the affordable housing project. Due to the fact that LIHTCs are only eligible to be claimed on depreciable capital improvements, the cost of the land is not includable towards qualified basis, and as such needs to be subtracted from the total purchase price when determining qualified basis.

Instances in which acquisition LIHTCs will be eligible to be claimed for LIHTCs will be more thoroughly discussed during a later portion of this guide. NIFA will require that the applicant supply either a current real estate tax valuation, clearly showing the percentage of total property value attributable to the land, or a purchase contract that clearly references the amount of the purchase price, which is reasonably attributable to the land.

The cost items requested in parts B, C, D, E, F, G, H, L, and I are considered self-explanatory.

The syndication costs as provided for in part J of the project cost section relate to any and all expenditures associated with the syndication of the LIHTCs.

\*Developer, contractor, and consultant overhead and profit fees will be allowed on new construction and rehabilitation projects. For purposes of determining the amount of credits that are allocable to a project, NIFA may limit these fees included in eligible basis to an amount not more than **20%** of eligible basis costs, excluding the fees. If the developer, contractor and consultant fees exceed the maximum percentage of 20%, the applicant must provide documentation outlining the reasons for the variation. Acceptance of this documentation is at the sole discretion of NIFA. When an identity of interest exists between the developer and contractor, NIFA may reduce the total of these fees where it deems the fees excessive. Applicant should further be aware that NIFA may reduce the level of credits to achieve the range of 20% for these fees.

NIFA will scrutinize total project costs to ensure that they are reasonable in light of the low-income housing objectives. In determining whether or to what extent a project qualifies for an allocation of credits, NIFA may compare such factors as projected cost per bedroom, LIHTCs per bedroom or other meaningful measures against standards or averages deemed reasonable (such as industry cost standards and/or average costs from competing projects).

When an application represents both acquisition and rehabilitation, as the example depicts, and the applicant elects to claim a developer's fee on both the acquisition of the buildings and their subsequent rehabilitation, then the applicant must claim the developer's fees which would be allowable for both categories of costs, instead of placing all of the developer's fees under the rehabilitation category.

# PROJECT COST SCHEDULE

	<u>Actual or Est. Project Costs</u>	<u>Acquisition Basis</u>	<u>New Construction/ Rehabilitation Basis</u>
<b>(A) <u>To purchase land and buildings</u></b>			
Land	\$ <u>250,000</u>	XXXXXXXXXX	XXXXXXXXXX
Existing structures	\$ <u>1,000,000</u>	\$ <u>1,000,000</u>	
XXXXXXXXXX			
Demolition	\$ _____	XXXXXXXXXX	XXXXXXXXXX
<b>(B) <u>Site work</u></b>			
Site grading, clearing, etc.	\$ _____	\$ _____	\$ _____
Off site improvements	\$ _____	XXXXXXXXXX	XXXXXXXXXX
Other _____	\$ _____	\$ _____	\$ _____
<b>(C) <u>Rehab/new construction cost</u></b>			
New building hard costs	\$ _____	\$ _____	\$ _____
Rehabilitation hard costs	\$ <u>1,000,000</u>	\$ _____	\$ <u>1,000,000</u>
Contractor overhead	\$ <u>50,000</u>	\$ _____	\$ <u>50,000</u>
Contractor profit \$ <u>50,000</u>	\$ _____	\$ <u>50,000</u>	
<b>(D) <u>Other Project Costs</u></b>			
-Property appraisal	\$ <u>5,000</u>	\$ _____	\$ <u>* 5,000</u>
(*NOTE: Includable in basis if for determining feasibility of project. If for permanent financing -not includable.)			
Market study	\$ <u>2,500</u>	\$ _____	\$ <u>2,500</u>
Environmental study	\$ <u>1,500</u>	\$ _____	\$ <u>1,500</u>
<b>(E) <u>Contingency</u></b>			
Construction contingency	\$ <u>95,000</u>	\$ _____	\$ <u>95,000</u>
Other _____	\$ _____	\$ _____	\$ _____
<b>(F) <u>Architectural/engineering cost</u></b>			
For design	\$ <u>25,000</u>	\$ _____	\$ <u>25,000</u>
For supervision	\$ <u>15,000</u>	\$ _____	\$ <u>15,000</u>
Other _____	\$ _____	\$ _____	\$ _____
<b>(G) <u>Construction period costs</u></b>			
Insurance	\$ <u>5,000</u>	\$ _____	\$ <u>5,000</u>
Construction loan interest	\$ <u>12,000</u>	\$ _____	\$ <u>12,000</u>
Origination fee	\$ _____	\$ _____	\$ _____
Credit enhancement fee	\$ _____	\$ _____	\$ _____
Bridge loan expense	\$ _____	\$ _____	\$ _____

(H) Financing fees and expenses

Bond premium	\$ _____	XXXXXXXXXXXX	XXXXXXXXXXXX
Credit report	\$ _____	XXXXXXXXXXXX	XXXXXXXXXXXX
Perm. loan orig. fee	\$ <u>30,000</u>	XXXXXXXXXXXX	XXXXXXXXXXXX
Perm. loan enhancement	\$ _____	XXXXXXXXXXXX	XXXXXXXXXXXX
Cost of underwriter	\$ _____	XXXXXXXXXXXX	XXXXXXXXXXXX
Title and recording	\$ <u>5,000</u>	XXXXXXXXXXXX	XXXXXXXXXXXX
Counsel fee	\$ _____	XXXXXXXXXXXX	XXXXXXXXXXXX
Other _____	\$ _____	XXXXXXXXXXXX	XXXXXXXXXXXX

(I) Soft costs

LIHTC fees	\$ <u>5,000</u>	XXXXXXXXXXXX	\$ <u>5,000</u>
LIHTC consultant fee	\$ <u>10,000</u>	XXXXXXXXXXXX	XXXXXXXXXXXX

(Note: LIHTC fees can be included in basis.)

(J) Syndication costs

Organizational	\$ <u>15,000</u>	XXXXXXXXXXXX	XXXXXXXXXXXX
Tax opinion	\$ <u>5,000</u>	XXXXXXXXXXXX	XXXXXXXXXXXX
Other _____	\$ _____	XXXXXXXXXXXX	XXXXXXXXXXXX

(K) Developer fees

Developer overhead	\$ _____	\$ _____	\$ _____
Developer fee	\$ <u>377,000</u>	\$ <u>187,000</u>	\$ <u>190,000</u>

(L) Project reserves

Rent-up reserves	\$ <u>30,000</u>	XXXXXXXXXXXX	XXXXXXXXXXXX
Operating reserves	\$ <u>25,000</u>	XXXXXXXXXXXX	XXXXXXXXXXXX
Other _____	\$ _____	XXXXXXXXXXXX	XXXXXXXXXXXX

Total residential costs:	\$ <u>3,013,000</u>	\$ <u>1,187,000</u>	
\$ <u>1,456,000</u>			
Total commercial space costs:	\$ _____	XXXXXXXXXXXX	XXXXXXXXXXXX

<b>Deduct from basis:</b>		
All grant proceeds used to finance costs in eligible basis	-\$ _____	-
\$ _____		
B.M.R. federal loans used to finance costs in elig. basis	-\$ _____	-
\$ _____		
Non-qualified non-recourse financing	-\$ _____	-
\$ _____		
Non-qualified portion of higher quality units	-\$ _____	-
\$ _____		
(Section 42(d)(5))		
Historic credits (on residential portion only)	-\$ _____	-
\$ _____		
<b>TOTAL ELIGIBLE BASIS</b>	<b>\$ <u>1,187,000</u></b>	<b>\$ <u>1,456,000</u></b>
<b>High cost area adjustment</b>		<b>multiplied by 130%</b>
<i>(no adjustment is allowed for acquisition costs)</i>		
<b>TOTAL ADJUSTED ELIGIBLE BASIS</b>	<b>\$ <u>1,187,000</u></b>	<b>\$ <u>1,456,000</u></b>
<b>Multiplied by the applicable fraction</b>	<b><u>100</u> %</b>	<b><u>100</u> %</b>
<b>TOTAL QUALIFIED BASIS</b>	<b>\$ <u>1,187,000</u></b>	<b>\$ <u>1,456,000</u></b>
<b>Multiplied by the Applicable Percentage</b>	<b><u>4.0</u> %</b>	<b><u>9.0</u> %</b>
<b>TOTAL AMOUNT OF LIHTC REQUESTED</b>	<b>\$ <u><u>7,480</u></u></b>	<b>\$ <u><u>131,040</u></u></b>

Upon the completion of the cost items specified within the project cost section of the application form, the applicant will then **deduct** from the total residential costs the following items:

1. **All grant proceeds used to finance development costs** - Pursuant to Section 42(d)(5)(A) of the Code, any grant of which any portion is funded with Federal funds, will require that the eligible basis for that property be reduced by the amount of such grant. Simply stated this means that if a property receives a Federal grant, then the amount of that grant must be subtracted from the total residential costs prior to the determination of LIHTC amounts. A similar rule applies to costs financed with the proceeds of state grants.
2. **Below market rate (B.M.R.) federal loans used to finance development costs** - Pursuant to Section 42(i)(2)(B) of the Code, those projects that are to receive financing, the source of which is from Federal funds, with an interest rate that is below the applicable federal rate, then the project owner may reduce the total residential costs by the amount of the principal of such financing. The alternative to this provision is for the project owner to reduce the applicable percentage from nine percent to four percent. A demonstration will be provided below for this scenario.
3. **Non-qualified non-recourse financing** - The provisions for this reduction are provided for within Section 42(k) of the Code pertaining to the At-Risk Rules. Generally speaking, non-qualified non-recourse financing is considered to be non-recourse seller financing. In the instance where a project owner acquires a property, and, as a portion of this acquisition price, the purchaser provides a note to the seller, the amount of such financing provided for within this note would be deducted from the total residential costs. (Not applicable to widely held corporations).
4. **Non-qualified portion of higher quality unit** - Pursuant to Section 42(d)(3) of the Code, in the instance where there exists a disproportionate standard between the quality of the non-set-aside low income units and those units set aside for affordable tenancy, the project owner must deduct the costs associated with those higher quality units from the total residential costs.
5. **Historic Rehabilitation Tax Credit** - In the instance where a property receives both historic rehabilitation tax credits and low-income housing tax credits, the amount of the historic rehabilitation tax credits must be deducted from the rehabilitation portion of the total residential costs prior to the determination of the low-income housing tax credit amount.

Through the deduction of the above listed items, the applicant has taken the total residential costs associated with the creation of the affordable housing and filtered them into what is referred to as total eligible basis, which is covered in Section 42(d) of the Code.

In order to take the property from total eligible basis to total qualified basis, the applicant must apply the applicable fraction as previously discussed in this guide. The **applicable fraction** is defined in Section 42(c)(1)(B) of the Code as the smaller of either the unit fraction or floor space fraction, each of which is described on the following page:

1. **Unit Fraction** - Pursuant to Section 42(c)(1)(C) of the Code, the unit fraction equals the amount of low-income units divided by the total number of units (vacant or occupied) within the property.

$$\text{Low-Income Units} \div \text{Total Units} = \text{Unit Fraction}$$

2. **Floor Space Fraction** - Pursuant to Section 42(c)(1)(D) of the Code, the floor space fraction equals the total floor space attributable to the low-income units divided by the total floor space (whether or not occupied) of the property.

$$\text{Low-Income Floor Space} \div \text{Total Floor Space} = \text{Floor Space Fraction}$$

By multiplying the total eligible basis, as previously determined, times the applicable fraction, the applicant will arrive at the total qualified basis of the property. To determine the maximum amount of LIHTCs that will be allowed under the qualified basis determination, the applicant must multiply the total qualified basis by the applicable percentage.

For purposes of the initial analysis of the application under this program, the applicant should utilize **four percent** as the applicable percentage for allowable acquisition costs and new construction/rehabilitation costs that will utilize some form of federal subsidy, as provided for in Section 42(i)(2)(A) of the Code. For all other new construction/substantial rehabilitation costs, the applicant will utilize **nine percent** as the applicable percentage.

At either the date on which the building is placed-into-service, as defined by the IRS, or at the election of the project owner, NIFA will fix the applicable percentage rate on either of the above two dates, pursuant to Section 42(b)(2) of the Code. The applicable percentage rate is set each month by the Secretary of the Treasury.

In the example provided above, the maximum annual amount of LIHTCs that may be claimed under the qualified basis determination would be \$178,520 (\$47,480 + \$131,040).

Utilizing the same total residential costs as provided for above, NIFA will now provide examples of how to determine the maximum amount of LIHTCs, through the qualified basis method, under a number of various scenarios.

Projects located in a Qualified Census Tract (QCT).

Under certain circumstances, properties located in a Qualified Census Tract may be eligible to have their new construction/rehabilitation eligible basis increased by 130%, as provided for in Section 42(d)(5)(C) of the Code. The increase to eligible basis, for properties located in a qualified census tract, is not allowable on any acquisition basis. The definition of a QCT is provided below:

**Qualified Census Tract** - Pursuant to Section 42(d)(5)(C)(ii) of the Code, a Qualified Census Tract is defined as any census tract so designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income that is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent.

The Secretary of Housing and Urban Development designates those areas that will receive the additional benefits inherent by increasing the eligible basis. On an annual basis, NIFA receives a listing of these Qualified Census Tracts and provides the information to you on page 20 of this guide and in the Application Form.

In providing this example of how to calculate the maximum amount of LIHTCs that would be permissible when a property is located in either of these two designated areas, NIFA will use the example as previously provided:

TOTAL ELIGIBLE BASIS	<u>\$1,187,000</u>	<u>\$1,456,000</u>
High cost area adjustment <i>(no adjustment is allowed for acquisition costs)</i>		<b>multiplied by 130%</b>
TOTAL ADJUSTED ELIGIBLE BASIS	<u>\$1,187,000</u>	<u><b>\$1,892,800</b></u>
Multiplied by the applicable fraction	100%	100%
TOTAL QUALIFIED BASIS	<u>\$1,187,000</u>	<u><b>\$1,892,800</b></u>
Multiplied by the Applicable Percentage	4.0 %	9.0 %
TOTAL AMOUNT OF LIHTC REQUESTED	<u>\$ <b>47,480</b></u>	<u>\$ <b>170,352</b></u>

In this example, the new adjusted eligible basis for the rehabilitation portion of the total residential costs has been increased from \$1,456,000 to \$1,892,800, which accounts for the 130% increase. The result of this increase in eligible basis, holding all other factors constant, is that the amount of LIHTCs that may be allowable for the rehabilitation has increased from \$131,040 to the new level of \$170,352.

As stated previously, only those areas designated by the Secretary of Housing and Urban Development, in accordance with the previously cited Code sections, may be eligible to claim this increase to new construction/rehabilitation basis (see page 20).

**Projects That Receive Federal Subsidy:**

Projects that will receive a form of below market mortgage financing which is funded in whole or in part through Federal funds will be required to reduce the credit percentage associated with the new construction/rehabilitation qualified basis.

The most common occurrence that leads to this reduction is the instance where an applicant is receiving financing from Rural Housing Services (RHS) (Farmers Home Administration) under its Section 515 program. This program provides long-term mortgage financing at a subsidized interest rate of one percent. This type of project would fall under the requirement that its applicable percentage be reduced from nine percent to four percent.

TOTAL ADJUSTED ELIGIBLE BASIS	\$ <u>1,187,000</u>	\$ <u>1,456,000</u>
Multiplied by the applicable fraction	100 %	100 %
TOTAL QUALIFIED BASIS	\$ <u>1,187,000</u>	\$ <u>1,456,000</u>
Multiplied by the Applicable Percentage	4.0 %	<b>4.0 %</b>
<b>TOTAL AMOUNT OF LIHTC REQUESTED</b>	\$ <u>47,480</u>	\$ <b>58,240</b>

In the above example, the applicable percentage was reduced from the initial nine percent to four percent, in accordance with Section 42(b)(2)(B) of the Code. The reduction in the applicable percentage resulted in the decrease of the LIHTC amount on the rehabilitation from \$131,040 to the current level of \$58,240.

In this example, the applicant could choose to deduct the total principal amount of the federal below market interest rate financing from total residential costs, and in doing so, be permitted to utilize an applicable percentage of nine percent against the rehabilitation costs.

Generally, applicants should opt to exclude the amount of federal subsidy from basis if it is less than 55% of new construction or rehabilitation costs eligible for a 9% (70% present value) LIHTC.

The LIHTC is larger using a 9% LIHTC for 45% of development costs (55% excluded) than using a 4% LIHTC for all 100% of development costs. The determination as to which course of action each applicant who is faced with this decision should take is strictly up to the applicant. **NOTE:** LIHTC percentages vary month to month, and therefore may change the break-even percentage.

It is important to note that some forms of Community Development Block Grant (CDBG) and HOME financing where the applicant clearly is required to repay the awarded funds **are not** considered under the provisions of a below market federal loan, as provided for in Section 42(i)(2)(D) and (E) of the Code, respectively.

**Projects That Elect to Set-Aside Less Than 100% of the Available Units.**

As stated previously, prior to calculating the qualified basis for any development, the project owner must first multiply his eligible basis by the applicable fraction. Under the two scenarios provided above, NIFA assumed that the project owner set aside 100% of the available units for occupancy by persons or families of low and very low income.

NIFA will assume the following unit breakdown and square footage in arriving at the required applicable fraction:

Unit Composition	Number of Units	Square Footage	Total Square Footage
One Bedroom Units	25	700	17,500
Two Bedroom Units	50	900	45,000
Three Bedroom Units	<u>25</u>	1,100	<u>27,500</u>
TOTALS	100		90,000

For this demonstration, NIFA will assume that the applicant of this example property chose to set aside the following units for occupancy by low and very low-income tenants under this program:

Unit Composition	Number of Units	Square Footage	Total Square Footage
One Bedroom Units	17	700	11,900
Two Bedroom Units	25	900	22,500
Three Bedroom Units	<u>8</u>	1,100	<u>8,800</u>
TOTALS	50		43,200

In order to determine the applicable fraction, the applicant will need to perform both the unit fraction and floor space fraction calculations as provided previously.

As you will recall, the formula for determining the unit fraction is:

$$\text{Low Income Units} \div \text{Total Units} = \text{Unit Fraction}$$

By utilizing this formula, the corresponding unit fraction for the unit composition and set-aside portions as provided above would be **50%** ( $50 \div 100 = 50\%$ ).

The formula for determining the floor space fraction once again is:

$$\text{Low Income Floor Space} \div \text{Total Floor Space} = \text{Floor Space Fraction}$$

Consequently, the appropriate floor space fraction for the unit composition and set-aside portions as provided above would be **48%** ( $43,200 \div 90,000 = 48\%$ ).

Upon the completion of these two calculations, the applicant would determine that the applicable fraction would be the lesser of the unit fraction or floor space fraction, or as would be the case in this example, 48%:

TOTAL ADJUSTED ELIGIBLE BASIS	<u>\$1,187,000</u>	<u>\$1,456,000</u>
Multiplied by the applicable fraction	<b>48 %</b>	<b>48 %</b>
TOTAL QUALIFIED BASIS	<b>\$ <u>569,760</u></b>	<b>\$ <u>698,880</u></b>
Multiplied by the Applicable Percentage	4.0 %	9.0 %
TOTAL AMOUNT OF <b>LIHTC</b> REQUESTED	<b>\$ <u>22,790</u></b>	<b>\$ <u>62,899</u></b>

The applicant must use the applicable fraction against both the acquisition and new construction/rehabilitation categories in order to properly calculate the maximum allowable LIHTC amount.

Only that portion of the project that is set-aside for usage under the LIHTC program may receive the benefits of the LIHTCs. Consequently, since the applicant in this example chose to set-aside only 48% of the property for tenancy by low and very low income persons and families, they may only be allocated that amount of LIHTCs that corresponds to the elected set-aside. As a result of this reduction in the applicable fraction, the qualified basis was reduced, which leads to the reduction in the amount of LIHTCs that the project owner can claim.

## **EQUITY / FUNDING GAP**

The equity/funding gap takes into consideration the total sources and uses of funds required for the completion of the new construction, rehabilitation or acquisition and subsequent rehabilitation of a particular property. The basis for this form of analysis may be found in Section 42(m)(2)(B) of the Code, which states that the housing credit agency should determine that level of LIHTCs that will be necessary in order for the project to be financially feasible as a qualified low income housing project throughout the credit period. In arriving at this determination, the housing credit agency is instructed to review the sources and uses of funds and the total financing planned for the project (Section 42(m)(2)(B)(i) of the Code) and also any proceeds or receipts expected to be generated by reason of tax benefits (Section 42(m)(2)(B)(ii) of the Code) or the syndication of the LIHTCs.

NIFA, through the process of determining the eligible basis of a particular property, has already accomplished the function of determining the total development costs associated with the completion of the property. The application form requires that the project owner supply information concerning the proposed financing to be utilized towards the completion of the proposed project, that will be used in this calculation to offset the anticipated development costs.

The final component of the equity/funding gap calculation is the determination of the proceeds to be received through the syndication of the LIHTCs. In arriving at this determination, NIFA may assume that the typical property will receive \$.75 for every dollar in LIHTCs allocated to the property. The \$.75 assumes the discounting which the investor will apply to the LIHTCs and also the cost associated with the arrangement of the limited partnership or limited liability company through a syndication firm. NIFA will utilize the equity/funding gap approach even in the instance where the project owner chooses not to sell the benefits of the LIHTCs to a potential investor.

### **Total Residential Costs**

The total residential costs are those development costs for both the acquisition and/or new construction/rehabilitation categories. It is important to note that this calculation utilizes those development costs, which are considered ineligible under the qualified basis determination.

### **Total Sources of Funds**

The total source of funds includes all proposed or current funding that will be utilized on the development. In arriving at the total sources of funds NIFA will be considering the permanent financing as opposed to interim financing. In the instance where grants are to be considered on a particular project, the applicant must include the initial amount of the grant as a source of funds under this calculation.

**Syndication Factor**

The syndication factor is the anticipated value of the LIHTCs to the project owner. This is the percentage of each dollar, which the syndication firms will pay for the LIHTCs. As previously stated, the syndication factor may be assumed at \$.75 per LIHTC dollar.

The basic formula for the equity/funding gap is as follows:

- Step 1: Total Residential Costs - Total Sources of Funds = Equity Funding Gap
- Step 2: Equity Funding Gap ÷ Syndication Factor = Total Value of LIHTCs
- Step 3: Total Value of LIHTCs ÷ 10 years = Annual Value of LIHTCs

In conducting this example, NIFA will utilize components of the Project Cost Schedule as previously provided. In the calculation of the equity/funding gap, the costs used to reference the total uses of funds is the total residential costs, which in the previous example totaled \$3,013,000. NIFA will assume that the applicant was successful in obtaining mortgage financing equaling \$2,000,000.

Total residential costs:	\$3,013,000	\$1,187,000	\$1,456,000
Total commercial space costs:	\$_____	XXXXXXXX	XXXXXXXX

The resulting level of LIHTCs determined through the equity/funding gap approach is:

- Step 1: \$3,013,000 - \$2,000,000 = \$1,013,000
- Step 2: \$1,013,000 ÷ .75 = \$1,350,667
- Step 3: \$1,350,667 ÷ 10 years = \$135,067 per year.

Under the equity/funding gap approach, it would be assumed that through the provision of \$194,807 per year in LIHTCs for the next ten years, that the applicant could transfer the benefits of these credits to a limited partner for \$.75 on the dollar and receive \$1,013,003 in equity capital that would offset the initial equity requirement.

The final process in arriving at the maximum amount of annual LIHTCs that would be eligible for a property, the project owner must compare the amount of LIHTCs arrived at under the qualified basis and equity/funding gap approaches. As stated previously, the maximum amount of LIHTCs that will be eligible to a property will be determined by the lesser of these two approaches.

**MAXIMUM ALLOWABLE RENTS TO BE CHARGED ON SET-ASIDE UNITS**

As previously discussed in the section pertaining to the requirements to be considered as a qualified low-income housing project, the project owner must agree to set-aside a certain percentage of the units for occupancy by persons or families of low and very low-income. The units that are to be set-aside for low and very low-income occupancy must also be rent restricted.

The portion of the Code that pertains to rent restrictions is Section 42(g)(2). In general, the rent that is allowed to be charged to a person or family of low or very low-income under the LIHTC program shall not exceed 30 percent of the imputed income limitation applicable to the units that are set-aside. Imputed income limitation is considered to be the income that would apply to individuals occupying a unit if the number of individuals that occupied the unit were determined as follows:

1. in the case where the unit does not have a separate bedroom, one individual; and
2. in the case where the unit has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

Taking the above definition into consideration, the following imputed income limitation parameters could be established:

<u>Number of Bedrooms</u>	<u>Imputed Income Limitation</u>
Efficiency	1.0 person
One Bedroom	1.5 persons
Two Bedrooms	3.0 persons
Three Bedrooms	4.5 persons, etc.

In calculating the maximum monthly rental rate that could be charged on a low-income set-aside unit, it has previously been stated that the rent may not exceed 30% of the imputed income limitation applicable to the unit. Within this 30%, the applicant must discount away any and all allowances for utilities that the tenant is responsible for paying directly to the service provider, pursuant to Section 42(g)(2)(B)(ii) of the Code.

LIHTC rent limits include an allowance for the cost of utilities (heat, lights, air conditioning, water, sewer, oil or gas). In projects where the owner pays all utilities, no adjustment in the LIHTC rent limits are needed to determine the maximum rent that can be charged for a LIHTC unit. In projects where tenants pay all or a portion of their own utilities, the rent established for a LIHTC unit must not exceed the applicable LIHTC rent limit for that unit.

Depending on whether or not the LIHTC project receives additional assistance from other programs (such as RHS, Section 8, etc.), owners may be required to use precalculated utility allowances. Owners of conventionally financed buildings may either rely upon local PHA- determined utility allowances or calculate allowances themselves. If owners choose to determine utility allowances themselves, they must be able to document calculations as described in Treasury Regulation Section 1.42-10.

The calculation of the maximum rental rate establishes the ceiling that may be charged under the requirements of the LIHTC program, and not what should be charged to any particular tenant. The applicant must continue to be sensitive to the prevailing market rates in establishing the rents, while being conscious of the maximum rental rate that is allowed for under the LIHTC program.

The imputed income limitation calculated in the process of determining maximum rental rates does not establish the maximum family income that a prospective tenant may earn and still qualify for the housing unit. The determination as to any particular tenant's ability to qualify for a unit is limited to their income in relationship to the established HUD median income tables that corresponds to the number of people that will reside within the housing unit.

The LIHTC maximum gross rents per unit by county can be obtained by contacting the NIFA LIHTC staff.

**LOCATION OF COUNTIES LISTED BY HUD AS QCT'S.**

Those properties that are to be considered in a qualified census tract must conform to the provisions in Section 42(d)(5)(C) of the Code. The definition for a qualified census tract was provided in the section dealing with the calculation of qualified basis. Following are the Department of Housing and Urban Development Statutorily Mandated Qualified Census Tracts for Section 42 of the Code:

<u>County</u>	<u>Census Tract Number</u>
Douglas	0003.00 0004.00 0005.00 0006.00 0007.00 0008.00 0009.00 0010.00 0011.00 0012.00 0016.00 0019.00 0021.00 0029.00 0032.00 0038.00 0039.00 0040.00 0041.00 0051.00 0052.00 0053.00 0054.00 0059.01 0059.02 0060.00 0063.01
Sarpy	0103.02
Lancaster	0004.00 0005.00 0007.00 0008.00 0017.00 0018.00 0019.00 0020.00 0032.01 0035.00
Adams	9661.00
Lincoln	9601.00
Buffalo County	9696.00
Cherry County	9559.00
Dawes County	9507.00

Keya Paha County	9754.00	
McPharson County	9579.00	
Scotts Bluff County	9537.00	
Thurston County	9761.00	9782.00
Pottawattamie County	0307.00	0309.00

<b>VALIDATING THE ALLOCATION OF LIHTCS BY YEAR END</b>
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After NIFA determines the feasibility of a project as an affordable housing project, and the maximum level of LIHTCs that are eligible to be claimed, those projects that pass all of the necessary tests will be considered for LIHTCs. Those applications that are recommended for LIHTCs will then be presented to the Board of Directors of NIFA for their consideration and approval.

Project owners receiving a conditional reservation of LIHTCs will be required to satisfy all of the conditions present within this commitment. Once all of these conditions have been met, it is required that the project owner either complete the necessary new construction/rehabilitation (commonly referred to as placing the units into service) or file for a carryover allocation prior to the end of the calendar year.

A carryover allocation will allow the project owner 24 months from the close of the calendar year in which said carryover allocation is issued, to complete the necessary rehabilitation or new construction and place the buildings into service. Failure on the part of the project owner to either place the units into service or file for a carryover allocation by the specified expiration date stated in the commitment notice, would result in the termination of the LIHTCs from NIFA.

**What is required in order to be eligible for a carryover?**

Eligibility for a carryover allocation requires compliance with the rules set forth in Section 42(h)(1)(E) of the Code and Treasury Regulation Section 1.42-6.

The following outlines basic qualification procedures for carryover allocations. A carryover allocation occurs when the project owner has not and will not be finishing the rehabilitation or new construction portion of the development prior to the end of the year in which the LIHTC commitment is issued.

1. Commitment fee specified in the allocation plan and commitment notice has been received by NIFA.
2. All conditions and requirements have been satisfactorily cleared with NIFA.
3. The project owner's basis in the development (as of the end of the calendar year in which the allocation is made) is more than 10% of the project owner's reasonable anticipated basis in the project (as of the end of the second calendar year succeeding the allocation year). Basis means the

taxpayer's adjusted basis of land and depreciable property that is reasonably expected to be part of the project, whether or not such amounts are includable in the eligible basis of the buildings in the project under Section 42(d) of the Code. An independent, third-party certified public accountant must certify that 10% of the project owner's reasonable anticipated basis has been incurred.

### **What is required in order to "place the project into service"?**

IRS Forms 8609 are issued to project owners who complete their rehabilitation or new construction. For project owners applying for acquisition and rehabilitation LIHTCs, the acquisition of the property must occur in the year the project receives its allocation of LIHTCs. If the project will be completed prior to the end of the calendar year in which it receives its commitment notice for LIHTCs, the project owner must cost certify the project prior to the expiration date stated in the commitment notice. The following outlines the basic requirements of cost certifying a project for final allocation:

1. All conditions and requirements have been satisfactorily cleared with NIFA.
2. Commitment fee and Compliance Monitoring fee have been received by NIFA.
3. Benefits and burdens of ownership have been transferred to the project owner and the federal tax i.d. number has been established.
4. The Land Use Restrictive Agreement has been correctly prepared, executed and filed in the appropriate county real property records.
5. NIFA has been presented with a cost certification audit and evidence that the new construction or rehabilitation work has been completed.

<b>AREAS OF DIFFICULTY EXPERIENCED BY APPLICANTS UNDER THE LIHTC PROGRAM</b>
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In order to provide you as much information as possible concerning the LIHTC program, NIFA will cover some of the typical areas in the program that have given previous applicants difficulty.

1. **Failure on the part of the applicant to provide NIFA with sufficient information in order for it to reach a determination concerning the application.** If the applicant does not submit sufficient information to NIFA in order for a determination to be made as to either priority of the application, eligibility of the property under the requirements of the LIHTC program, maximum amount of LIHTCs that may be permitted on the property, etc., then NIFA will be delayed in processing the application. If the deficiencies under this scenario are not adequately addressed by the applicant, the property may not be considered for LIHTCs during the application cycle or possibly may be terminated by NIFA.
2. **Failure on the part of the applicant to properly calculate the maximum amount of LIHTCs that might be eligible on the property.** By not properly calculating the amount of LIHTCs that are eligible to be claimed on any property, the applicant may either overestimate or underestimate the potential LIHTC allocation. If plans and forecasts dealing with the financial structure of the development are taken into consideration, under the assumption that the initial applicant's LIHTC

estimates are correct, and NIFA subsequently recalculates the LIHTC amount at a lower level, then the project owner would be faced with the prospect of re-analyzing the transaction to determine the willingness to proceed under the new LIHTC amounts.

3. **Failure on the part of the applicant to properly calculate the maximum amount of rents that would be allowable under the LIHTC program.** When the applicant improperly calculates the maximum rental rates that may be charged under this program, and in doing so bases the proforma operating estimates on the incorrect rental rate, the reduction in the maximum allowable rental amount may adversely affect the long term estimates of operating performance, and possibly reduce the property's viability under the LIHTC program.
4. **Failure on the part of the applicant to properly satisfy the necessary year-end requirements of the LIHTC program.** As stated previously in this guide, the project owner is required to either place the units into service or file the necessary documentation in order to receive a carryover allocation of the LIHTCs prior to the end of the calendar year in which the commitment was received by the project owner. Should the project owner receive a commitment of LIHTCs and fail to perform under either of these two alternatives by the end of such calendar year, NIFA will terminate the LIHTC commitment.
5. **Failure on the part of the applicant to adhere to application cycle deadlines or supplemental notice deadlines issued from NIFA.** The applicant is advised to adhere to the deadlines with regards to any application cycle and any notice issued with regards to the property whereby NIFA is requesting additional information in order to complete its analysis of the property. NIFA will not accept any application that is filed after the posted deadline. The failure on the part of the applicant to submit the required supplemental documentation by the specified due date may be cause for the termination of the project file.
6. **The applicant fails to provide NIFA with a completed application package.** Much the same as discussed in issue number one, if the applicant provides NIFA with an incomplete application package, NIFA will be required to pursue the applicant for additional documentation instead of analyzing the property for its eligibility for LIHTCs. In certain cases where the applicant fails to provide NIFA with information concerning selection criteria issues, NIFA may be forced to consider the application based upon the information initially submitted, which could reduce the priority associated with the property. As stated earlier in this guide, NIFA will not take the responsibility of insuring that criteria issues, which would be eligible to be claimed on a certain property, have been provided in a satisfactory manner. It is the responsibility of the project owner to claim those criteria points that the application is eligible to receive. NIFA will take the responsibility of either confirming or denying the claims made by the project owner with regards to the application exhibits.
7. **Application fails to score a sufficient number of points in order to be considered for LIHTCs.** When the application fails to score points in the required threshold criteria during a given application cycle, the application will not be considered for LIHTCs during that application cycle. This possibility takes on new meaning when the application cycle in which the project owner is competing in is the last cycle of any given program year. The failure to be considered during that final cycle would mean that the property will not be considered during that program year.

8. **The applicant fails to provide NIFA with all of the information as requested within the threshold criteria.** In order for an application to be considered for review, a project must first demonstrate that it meets the required threshold criteria. Consequently, the failure on the part of the project owner to supply the information requested in the threshold criteria will force the delay in the review process of the project and may cause the project application to be terminated.
9. **Failure on the part of the applicant concerning the purpose and benefits to be received from LIHTCs.** LIHTCs are an ingredient that when combined with other forms of financing will foster the creation of affordable housing. The LIHTC is a component of the overall financing package and not the whole package itself. Consequently, the project owner must also seek interim and permanent debt financing as well as arrange the manner in which he/she will provide for the required amount of equity in order to complete the property. It is highly advisable for the project owner to seek these other sources of funding while they are competing for the LIHTCs. Failure to consider the role of the LIHTCs in the development process and the corresponding year-end requirements may result in the project owner receiving a commitment for LIHTCs, yet be unable to satisfy the provisions necessary in order to validate the allocation.

<b>MOST COMMONLY ASKED QUESTIONS PERTAINING TO THE LIHTC PROGRAM</b>
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The following represent a sampling of common questions asked of NIFA concerning the LIHTC program. When possible, NIFA will provide specific Code citations as a supplement to the answers provided. NIFA will not provide any opinions concerning the Code and its relationship to any particular real estate transaction - such opinions should be sought from qualified third party sources.

1. **How long does it take from the date of my application until I find out if I am to receive a commitment for LIHTCs?** The time between the date in which an application is submitted to NIFA and date on which a determination is to be made as to who will receive a commitment of LIHTCs may vary. Those applications that are submitted early in the application cycle will naturally have to wait longer than those that are received on the last day of that cycle. After all the projects have been reviewed, NIFA will commence the process of underwriting each file to determine eligibility for LIHTCs and viability as an affordable housing property during the compliance period. Applications that pass the underwriting process and have the highest priority, will then be presented to NIFA's Board of Directors for consideration at its next scheduled meeting.
2. **What happens if my application is denied by NIFA for LIHTCs during an application cycle?** Those applications that either scored insufficient points or did not pass the underwriting process to receive a reservation of LIHTCs, may resubmit an amended application during a subsequent application cycle, whereby the application will once again undergo the full application process. Those applications which are denied LIHTCs on the basis that they do not qualify under the provisions of Section 42 of the Code may either require a more thorough revision or re-analysis on the part of the applicant as to its potential to qualify under the requirements of the Code.
3. **Do I need to hire a consultant for the purpose of applying for the LIHTCs?** A number of applicants have historically commissioned the services of consultants, whose primary responsibility is the completion of the application package in order for the property to be considered pursuant to the Rules that are at that time in effect for the LIHTC program. Although there are a number of

consultants that might provide assistance to a potential LIHTC applicant, the requirement that a consultant be hired in order to successfully compete for the LIHTCs is not necessary. NIFA is willing to assist a potential applicant in the understanding of the LIHTC program and the various requirements that must be met in order to apply. Finally, we hope that materials such as this information guide will assist you in understanding this program so that you feel confident enough in filing your own application, should that be your desire.

4. **Do I need to hire either a independent third certified public accountant (CPA) or tax attorney in applying for the LIHTCs?** As with the case in issue number three, concerning the absolute need for commissioning the assistance of a consultant, it is not believed that the potential applicant must hire either a CPA or tax attorney in preparing the application for LIHTCs. However, the services of either a CPA or tax attorney may be required in the determination as to the requirements of the Code and their relationship to the real estate transaction in question. The usage of a CPA will be required at the time of carryover and placement into service, primarily for the purpose of providing NIFA with certain required certifications and audits.
5. **When I am calculating the maximum rental rate of the tenants, and I am not paying for electricity (or some other utility) must I estimate the actual monthly utility expense to the tenant in determining the final eligible rental rate?** The answer is **no**. The project owner is not responsible for estimating the monthly utility consumption of the tenants in determining the maximum eligible rental rate. As previously discussed in this guide, the maximum rental rate takes into consideration that not more than 30% of the imputed income limitation may be charged for housing to a prospective tenant. In arriving at this 30%, the project owner must be aware of any utility costs that the tenant will be responsible for paying directly to the service provider. In the case where a tenant is required to pay electricity to the local provider directly, then, pursuant to Section 42(g)(2)(B) of the Code, the project owner must discount the maximum monthly housing cost by the applicable utility allowance as provided for under section 8 of the U.S. Housing Act of 1937. These utility allowances may be obtained from the local public housing authority and may change on an annual basis.
6. **What happens when I have leased a unit to a Section 8 recipient and the fair market rent paid through the Section 8 program exceeds the maximum rent requirements?** In the instance where a tenant in a property is receiving housing assistance under section 8 of the U.S. Housing Act of 1937, and the payment made to the project owner exceeds that which is allowed for under Section 42(g)(2) of the Code, the unit will not cease becoming an affordable housing unit as defined by Section 42 of the Code. The point of law is found in Section 42(g)(2)(B) of the Code whereby the gross rent will not include any payments made under the Section 8 program. Consequently, the project may receive rental assistance payments in excess of the allowable level and still maintain the unit as rent restricted. However, the project owner must understand that the tenant's contribution towards rent may not exceed that amount which is allowed for under Section 42(g)(2) of the Code.
7. **I have completed the rehabilitation of a property in March of 2002 and I would like to be considered for LIHTCs. Some of the costs that are associated with this rehabilitation were incurred in 2001. May I apply for these LIHTCs in 2002 even**

**though I have completed my rehabilitation prior to making an application with NIFA?** In answering a question of this nature, NIFA would turn to analyze the issues pertaining to the timing for making a LIHTC allocation and the time period over which a project owner may accumulate basis. First, in considering the time for making an allocation of LIHTCs, NIFA would refer to Section 42(h)(1)(B) of the Code, whereby it would find that an allocation of LIHTCs shall be taken into account only if it is made not later than the close of the calendar year in which the building is placed in service. Next, NIFA would determine the requirements for the placement into service of qualified rehabilitation expenditures. In answering this question, NIFA would reference IRS Advance Notice 88-116 concerning placed in service issues. IRS Advance Notice 88-116 states that under Section 42(e)(4)(A) of the Code, rehabilitation expenditures that are treated as a separate new building are considered placed into service at the close of any 24-month period, over which such expenditures are aggregated. Consequently, the costs incurred by the project owner in 2001 would be includable in basis and by completing the rehabilitation in 2002, the project owner would be eligible for consideration of LIHTCs during the program year 2002.

8. **When would the purchase of an existing apartment complex qualify for the acquisition LIHTCs?** The most common provisions whereby the purchase of an existing structure would be qualified for acquisition LIHTCs are (1) when the owner from which you are to acquire the property has had constant ownership of the property in question for a period of at least **10 years**, and (2) when the seller of the property is an insured depository institution in default, or from a receiver or conservator of such an institution. The RTC qualifies as a receiver or conservator of a defaulted depository institution. It is important to note that in order to receive the benefits of the acquisition credit when purchasing a property from the RTC, the project owner must file for a waiver of the 10-year Rules with the IRS. Only after such determination has been made by the IRS that the property's acquisition may waive the 10-year rule, will the project owner be eligible to receive any final documentation from NIFA concerning the acquisition LIHTCs. The complete provisions under which the purchase of an existing structure may qualify for acquisition LIHTCs is provided for in Section 42(e) of the Code.

## CONCLUSION

As stated in the first portion of this guide, NIFA's intention in providing this information is to familiarize you with the requirements of the LIHTC program. While NIFA is sure that each person may have specific questions that this guide may not have sufficiently addressed, we hope that the information will provide an adequate foundation upon which you may build your understanding of this program.

NIFA always stands ready to assist you in understanding the LIHTC program and the means by which an application is to be presented. NIFA will offer direct assistance to any individual that requires this service in the preparation of the LIHTC application. However, NIFA will not take the responsibility of completing the application package for you.

NIFA looks forward to your continuing interest in the LIHTC program and also in the creation of additional decent, safe, and sanitary affordable housing.

Inquiries and further questions should be directed to:  
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Suite 200,  
Lincoln, NE 68508-1402

Phone (402) 434-3900

Fax (402) 434-3921

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