

Territory of American Samoa



**QUALIFIED ALLOCATION PLAN**  
**Calendar Years 2008 & 2009**

***"Making Decent Housing Affordable"***

Low-Income Housing  
Tax Credit (LIHTC) Program

**Development Bank of American Samoa**  
*Territorial Housing Credit/Finance Agency*

**Office of Federal Programs**  
*Oversight & Monitoring*

June 2008

**DRAFT**

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**TERRITORY OF AMERICAN SAMOA  
LOW-INCOME HOUSING TAX CREDIT (LIHTC) PROGRAM  
QUALIFIED ALLOCATION PLAN (QAP)  
FOR CALENDAR YEARS 2008 & 2009**

**I. Prologue**

Established by the Tax Reform Act of 1986, the Low-Income Housing Tax Credit (LIHTC) Program is a financing mechanism for private developers and non-profit entities to construct or rehabilitate affordable rental units for low-income individuals and families. Pursuant to the Omnibus Budget Reconciliation Act of 1989, American Samoa is required to develop a “Qualified Allocation Plan” (QAP), defining the process by which the Territory will distribute the LIHTCs to low-income rental housing developments within its shores. Using a tax incentive designed to increase private participation in the development of decent affordable rental housing, the LIHTC Program provides Federal tax credits to qualified project owners who agree to maintain all or a portion of a project’s units for low-income individuals and families. The Federal tax credits may be used to obtain a dollar-for-dollar reduction in income tax liability for ten (10) years. The tax credit may be sold to a qualified investor in exchange for an equity investment in the project.

Governed by regulations contained in Section 42 of the U. S. Internal Revenue Code (IRC), the Federal LIHTC is a program administered by the Internal Revenue Service. As the Territory’s gubernatorially-designated housing credit/finance agency, the Development Bank of American Samoa (DBAS) is responsible for the overall administration of the Federal LIHTC Program in American Samoa, with general oversight and monitoring provided by American Samoa’s Single Point of Contact (SPOC)/ASG Federal Grants Coordinator/Director of the Office of Federal Programs. DBAS encourages the development of projects that maximize the utilization of the tax incentive provided by the LIHTC, thus alleviating the need for heavy public subsidy.

In accordance with Section 42 of the IRC and American Samoa Executive Order No. 008-2006, the Governor’s Office, the SPOC, and the DBAS developed this “Qualified Allocation Plan”, with input from other public agencies, private organizations, and the general public. This QAP sets forth—

- a) the criteria to evaluate and allocate tax credits to projects which best meet the housing needs of American Samoa and preferences required by Section 42 of the IRC, and
- b) the process to monitor for compliance with the provisions of the LIHTC Program.

This QAP shall be effective for reservations and awards of LIHTCs for calendar years 2008 and 2009. It is subject to change by the DBAS, in consultation with the Governor's Office and the SPOC.

## **II. Application, Submission, and Award Process**

Applications for the LIHTC are available at the DBAS main office in Pago Pago, Tutuila, American Samoa or by submitting a written request to the following address:

The Development Bank of American Samoa  
P. O. Box 9  
Pago Pago, American Samoa 96799

### **ATTENTION: LIHTC Program Manager**

Applications for the LIHTC must be received by authorized staff at the DBAS main office in Pago Pago no later than 2:00 p.m. (Samoa Time) on March 15th of the calendar year for which the tax credit allocation is requested. Upon timely receipt of an application for LIHTC, the DBAS shall review the application to ensure that the application is complete and contains all required information. The application in its original form must be duly executed and notarized. Either the Chief Executive Officer of the DBAS or the SPOC may defer the consideration of any application if, in their sole discretion, such deferral is deemed in the best interests of meeting the Territory's housing needs.

Applicants must complete all applicable questions and supply all documents that are requested in the application form. Formal review of the application will occur only after the application is complete and all necessary documentation is completed.

The application is intended to be comprehensive in addressing all information essential to a fair and responsible tax credit allocation decision. However, DBAS reserves the right to ask for supplemental information during the review and evaluation process if it is deemed necessary.

Each complete application, timely received, shall be evaluated in accordance with this QAP to determine the project's rank in relation to other projects in the evaluation. Projects receiving the highest ranking shall be further assessed to determine the minimum amount of tax credits required to make the project feasible. The amount of tax credits reserved or allocated to a particular project will be limited to the amount the DBAS, in consultation with the SPOC, deems necessary to make the project feasible.

This QAP will utilize a point system to rank projects based upon the evaluation criteria established. Together with all other relevant data, the ranking of projects will

determine the priorities to be followed by the DBAS, in consultation with the SPOC, in allocating tax credits to the projects under consideration. The scores derived from the point system will be a component of the overall evaluation, and not the sole determining factor for the awarding of tax credits. In addition to the scores derived, the DBAS will review all relevant data required in the application which include, but are not limited to, the applicant's financial statements, experience in producing low-income housing units, reasonableness of development and operating budgets, and an independent comprehensive market study in awarding the tax credits.

Projects selected under this QAP shall be evaluated as to the minimum amount of tax credits required in order to make the project feasible.

### **III. Selection Criteria**

#### **A. Minimum Thresholds**

Applicants must meet the following Minimum Threshold requirements to receive consideration for an allocation or award of LIHTCs.

##### **Market Study:**

A comprehensive Market Study of the housing needs of low-income individuals in the area to be served by the project by a disinterested party, approved by the DBAS or SPOC, must be submitted as part of this application. The Market Study shall be completed at the Owner's expense. Any application failing to submit a Market Study or submits a Market Study dated over 3 (three) months from the time of application will not be considered for an award of tax credits.

Market Study requirements are delineated in Appendix I.

##### **Site Control:**

To receive consideration for an award of LIHTCs, the applicant must have legal control of the site in the form acceptable to the DBAS. Legally sufficient evidence of site control shall be submitted with the LIHTC application. Site control shall be substantiated by providing evidence of an executed lease or sale option agreement, warranty deed, executed land lease or any other legally sufficient documentation acceptable to DBAS. Evidence of site control must be provided for all proposed sites.

##### **Capital Needs Assessment (For projects acquiring an existing property):**

To ensure that the proposed rehabilitation of the project is adequate and that the property will have a useful life that exceeds the compliance and any extended use period, a capital needs assessment of the property by a competent third party shall be submitted with the application.

- B. Low-Income Housing Tax Credit Projects Financed with Tax-Exempt Bonds**  
 Projects financed with tax-exempt private activity bonds may qualify for LIHTC in excess of American Samoa’s volume cap. Applicants may apply for LIHTC with a commitment to issue private activity bonds from a state/local government or any other appropriate and legally recognized public entity.

Applicants requesting LIHTC must submit all documentation required in the application and will be subject to all feasibility reviews as required for an application for LIHTC from American Samoa’s volume cap. Applications for LIHTC outside of American Samoa’s volume cap will not be subject to the Criteria Scoring.

**C. Criteria Point System**

Except as otherwise provided herein, each application will be evaluated and awarded points in accordance with the following criteria.

	<b>CRITERIA</b>	<b>POINTS</b>
1.	Project will provide an equal or greater percentage of low-income units as required under Section 42 of the Internal Revenue Code (IRC)	0 - 10
2.	Project will provide low-income units for an equal or longer period as required under Section 42 of the IRC	0 - 5
3.	Project’s LIHTC to low-income rental unit ratio	0 - 6
4.	Project has the appropriate zoning or the applicant has secured the necessary exemptions/variances to construct the project	0 or 4
5.	Applicant shows that all low-income units will be made available to eligible individuals/families through a process acceptable to the DBAS and the SPOC	0 - 2
6.	Preservation of existing affordable rental housing at risk of being converted to market	0 or 2
7.	Project will give preference to tenant populations	0 - 6
8.	Project serving tenants with special housing needs	0 - 4
9.	Project is participating with a local tax exempt organization and is sponsored by a qualified non-profit, as defined in Section 42 of the IRC	0 - 3
10.	The ratio of total tax credits requested as a percentage of total project cost	0 - 5
11.	The ratio of developer fee as a percentage of total project cost	0 - 5
12.	Project will be receiving project-based rental assistance subsidies	0 - 4
13.	Projects offering tenants an opportunity for home ownership	0 or 1
14.	Project location and market demand	0 - 6
15.	Developer experience	0 - 6
16.	Overall project feasibility	0 - 10



**Criterion 3.**

The ratio is derived as:

Total LIHTCs Requested (Annual)/Total No. of Proposed Low-Income Units

\$18,000 or more per unit per year in LIHTCs requested.....	0 points
\$16,000 to \$17,999/unit/year in LIHTCs requested.....	1 point
\$15,000 to \$15,999/unit/year in LIHTCs requested.....	1.5 points
\$14,000 to \$14,999/unit/year in LIHTCs requested.....	2 points
\$13,000 to \$13,999/unit/year in LIHTCs requested.....	2.5 points
\$12,000 to \$12,999/unit/year in LIHTCs requested.....	3 points
\$11,000 to \$11,999/unit/year in LIHTCs requested.....	3.5 points
\$10,000 to \$10,999/unit/year in LIHTCs requested.....	4 points
\$9,000 to \$9,999/unit/year in LIHTCs requested.....	4.5 points
\$8,000 to \$8,999/unit/year in LIHTCs requested.....	5 points
\$7,999 or less/unit/year in LIHTCs requested.....	6 points

**Criterion 4.**

The applicant’s readiness to proceed with the implementation of its project with respect to development approvals:

- The applicant has obtained all necessary development approvals for its project and is ready to proceed with the implementation of its project without any additional development approvals (i.e zoning changes/variances). **4 points**
- Project is not appropriately zoned and/or does not conform to American Samoa’s Land Use regulations or requires variances, subdivision approval, or any other exemption from any Territorial land use restrictions. **0 points**

**Criterion 5.**

The applicant demonstrates that all low-income units will be made available to eligible individuals/families through a process acceptable to the DBAS and the SPOC. The applicant will provide a copy of its process for acceptance by the DBAS and the SPOC.

- If applicant fails to provide written process or provides written process unacceptable to both the DBAS and the SPOC.....0 points
- If applicant’s written process is unacceptable to either the DBAS or the SPOC.....1 point
- If applicant’s written process is acceptable to both the DBAS and the SPOC....2 points

**Criterion 6.**

Preservation of existing affordable rental housing at risk of being converted to market. A project will receive 2 points for this criterion if the applicant will be either:

- 1. acquiring or rehabilitating a LIHTC project with an expiring compliance or extended use period and agrees to extend the affordability period for an additional 15 or more years, or
- 2. acquiring or rehabilitating a project which is at risk of being converted to a market rate rental or for sale project, which may result in a loss of affordable rental units. The project shall have a contractual obligation to provide affordable housing to meet the terms of financing administered by HUD, USDA Rural Development, or other housing programs. The applicant shall agree to extend the affordability period for an additional 15 or more years.

**Criterion 7.**

Project will receive up to 6 points if it elects to provide affordable housing that serves one or both of the following tenant populations:

- 1. **Elderly households** (at least 25% of total low-income units).....2 points
- 2. **Individuals with children and large families.** Family projects that provide larger units which are available to individuals with children or large families may receive up to 4 points for this criterion. Projects providing units that are 2-bedrooms or larger for at least 10% of all low-income units may earn 1 to 4 points according to the following schedule:

10% to 19% of the total units.....	1 point
20% to 29% of the total units.....	2 points
30% to 39% of the total units.....	3 points
40% or more of the total units.....	4 points

**Criterion 8.**

Project will provide housing for tenant populations with special housing needs:

- o For the purpose of this QAP, “special housing needs” refers to persons for whom social problems, age or physical or mental disabilities impair their ability to live independently and for whom such ability can be improved by more suitable housing conditions. Persons with special housing needs may include the physically and mentally disabled and the homeless.
- o Projects may receive up to 4 points for the criterion if it commits to provide services that will enhance the livability of project for tenant populations with special housing needs. The number of points awarded will be based on the quantity and quality of services provided and the status of commitment. The

maximum four (4) points will be awarded only to an applicant that has an executed commitment to its project by a third party service provider or if applicant or owner is an experienced provider of the proposed services.

- All such services shall be optional to the tenant and shall be provided at no additional cost to the tenant.
- Projects must substantiate the feasibility of providing these services throughout the compliance period as part of its application. The owner shall certify the feasibility of the services provided in the application accompanied by supporting documentation during the compliance period.

**Criterion 9.**

Project is participating with a local tax-exempt organization and is sponsored by a qualified non-profit, as defined in Section 42 of the IRC.

- If the above statement is not true.....0 points
- If the above statement is true.....1 point
- The project will elect to receive an allocation from the non-profit set-aside. If this election is made, the owner must comply with the requirement of the non-profit set-aside during the compliance period.....3 points

**Criterion 10.**

If total LIHTCs requested (annual LIHTC request multiplied by ten years) as a percentage of total project cost is:

- More than 80% of total project cost.....0 points
- 71% to 80% of total project cost.....1 point
- 61% to 70% of total project cost.....2 points
- 51% to 60% of total project cost.....3 points
- 41% to 50% of total project cost.....4 points
- 40% or less of total project cost.....5 points

**Criterion 11.**

The applicant elects to limit total Developer Fee as a percentage of total development cost as presented in the application. Developer Fee includes, but is not limited to, consulting fees, project management fees, developer overhead and developer fees. Architectural, Engineering, Accounting, and Legal fees are not included as Developer Fee.

- More than 15% of total project cost.....0 points
- 15% of total project cost.....1 point
- 12% of total project cost.....2 points

- 10% of total project cost.....3 points
- 8% of total project cost.....4 points
- Less than 6% of total project cost.....5 points

**Criterion 12.**

Project will be receiving project-based rental assistance subsidies which would result in eligible tenants paying approximately 30% of their gross monthly income towards rent. Eligible programs shall include, but not limited to, the Rural Development 515 Loan Program and HUD Section 8 project-based Rental Assistance Program.

- If the above statement is untrue.....0 points
- If the above statement is true.....1 to 4 points

If the whole project has project-based subsidies then 4 points is awarded. If only a portion of a project has project-based subsidies, then the scoring will be adjusted based upon the percentage of units subsidized. The percentage is derived as “Number of Subsidized Units/LIHTC and non-LIHTC subsidized units,” provided they are developed simultaneously.

**Criterion 13.**

Projects offering tenants opportunities for home ownership. The applicant will offer tenants a right of first refusal to acquire the property in accordance with Section 42(i)(7) of the IRC. To receive consideration for the criterion, applicant must provide a feasibility analysis addressing the tenant’s ability to purchase the unit. The applicant must also provide a plan discussing how its project will offer the units for homeownership to tenants.

- If the above statement is untrue.....0 points
- If the above statement is true.....1 point

**Criterion 14.**

Project location and market demand.....0 to 6 points

The points awarded will be based on the DBAS’s evaluation of factors such as, but not limited to:

- Project is located in a county’s urban core/district (preference) versus rural district;
- Employment opportunities, recreational facilities, shopping facilities, medical facilities located in the immediate vicinity of the project site;
- Strength of the market study;

- Are the proposed rental rates below market rents for the immediate surrounding area?
- Are project or housing characteristics (e.g., design, density) appropriate for the neighborhood? Does the project appear to satisfy market need? Is there documented /supported market demand?
- Is the project location in the neighborhood conducive for senior or family residential use?
- Consideration of any issues that would affect the marketability of the proposed project.

**Criterion 15.**

Developer experience.....0 to 6 points

The points awarded will be based on the DBAS’s evaluation of factors such as, but not limited to:

- Developer’s (or any party affiliated with the development team) experience or ability (or inexperience/inability) to successfully complete the project.
- Developer’s success or failure in meeting the objectives of the program on past proposals;
- Development Team’s success or failure in meeting the objectives of the program on past proposals;
- Development Team’s experience or ability to successfully complete the project;
- Project’s general partner and/or affiliates have a history of chronic and/or substantive noncompliance, have failed to meet the requirements of the Declaration for Low-Income Housing Credits for previous projects, or have any significant tax credit history with other state tax credit allocating agencies.

**Criterion 16.**

Overall Project Feasibility.....0 to 10 points

The points awarded will be based on the DBAS’s evaluation of any and all factors that could impact overall project feasibility, such as, but not limited to:

- Reasonableness of development costs;
- Feasibility of financing structure;
- Operational feasibility (e.g., unreasonable operating expenses);
- Identification of serious issues in need of resolution for the project to proceed in a timely manner and the ability of the Development Team to resolve these issues. (E.g., lack of adequate financing resources; land use and zoning issues; utility,

- water, sewer availability) The ability of the Development Team to resolve these issues that the development of the project will commence in a timely manner.
- Adequacy of Reserves including but not limited to Operating Reserve and Repair and Replacement Reserve;
  - Services and amenities provided to tenants that will enhance the livability of the project;
  - Adequacy of project contingencies in the development budget.

#### **IV. Rights of the DBAS and the SPOC**

The DBAS reserves the right to disapprove any application or project for any LIHTC reservation or allocation, regardless of ranking under the criteria and point system as contained in section III of this QAP. The DBAS chief executive officer or the SPOC shall have the authority to defer consideration of any application if, in their sole discretion, such deferral is deemed in the best interest of meeting housing needs.

The DBAS reserves the right, in consultation with the SPOC, to (a) hold back a portion of the annual federal housing credit ceiling for use during later reservation cycles, (b) carry over a portion of the current year's housing credit ceiling for allocation to a project which has not yet been placed in service, and (c) under certain conditions, issue a reservation for up to 25% of the next year's housing credit ceiling.

The DBAS is required under the IRC of 1986, as amended, to allocate the minimum amount of LIHTCs required to make a project feasible. The determination of the amount of LIHTCs to be reserved or allocated to a project shall be at the discretion of the DBAS, with consultation of the SPOC. The DBAS may, at the time of issuance of the IRS Form(s) 8609 for the project, decrease the amount of the LIHTCs allocated to a project based on the actual cost and financing of the project.

The DBAS in no way represents or warrants to any interested party which may include, but is not limited to, any developer, project owner, investor, or lender that the project is, in fact, feasible or viable.

No board member, officer, employee, or agent of the DBAS shall be personally liable concerning any matters arising out of, or in relation to, the reservation or allocation of the LIHTC. The SPOC and his staff, as well as all personnel of the Office of the Governor, too shall not be personally liable for any matters arising out of, or in relation to, the reservation or allocation of the LIHTC.

## V. Fees

The following fees are associated with the LIHTC program. The DBAS reserves the right to waive or adjust fees due to changing circumstances annually each January 1 or at any other time it deems fitting and proper. All fees shall be paid via Cashier's Check and payable to the Development Bank of American Samoa.

- ❖ ***Application Fee.*** An Application Fee of Seven Hundred Fifty Dollars (\$750) per application shall be payable at the time of submission of the application. The fee shall be the same for all applicants.
- ❖ ***Good Faith Deposit.*** A good faith deposit of ten percent (10%) of the first year's LIHTC reservation shall be payable at the time the executed binding agreement is submitted to the DBAS. Upon allocation and issuance of the IRS Form 8609, seventy percent (70%) of the good faith deposit shall be retained by the DBAS as an administrative fee. The remainder of the good faith deposit may be refunded to the applicant upon satisfactory completion of the project.
- ❖ ***Multi-Building Fee.*** For projects containing more than one building or multiple projects with one owner (such as scattered site single family developments), a one-time single fee of \$100 per building in excess of one shall be payable at the time the building is placed into service.
- ❖ ***Compliance Monitoring Fee.*** Please refer to Section VI. Compliance Monitoring Plan for more details regarding the Compliance Monitoring Fee.

## **VI. Compliance Monitoring Plan**

### **A. Summary**

The DBAS shall monitor compliance with all applicable Federal and Territorial Program requirements for the period a project is committed to providing low-income rental units. The DBAS will require that all qualified tenants of a project be certified upon occupancy and be re-certified annually to ensure compliance. Projects shall be required to maintain copies of the income certification for each tenant on forms approved or provided by the DBAS. Projects will also be required to maintain records regarding number of rental units (including number of bedrooms and size of square footage of each bedroom); percentage of rental units that are low-income units; rent charged on each rental unit including utility allowances; documentation regarding vacancies in the building; eligible and qualified basis of the building at the end of the first year of the credit period, and at the end of each year until required set-asides are met; and character and use of the nonresidential portion of the building that is included in the building's eligible basis, all in accordance with the rules published by the Internal Revenue Service.

The DBAS may perform an audit annually, but at a minimum, once every three years, and shall have access to all books and records upon notice to the project owner. Annually, owners of low-income housing tax credit projects will be required to certify to the DBAS that for the previous year, the minimum set-aside requirement was met; there was no change in the applicable fraction, or an explanation if there was a change; appropriate income certifications and documentation have been received for each low-income tenant; each low-income unit was rent-restricted in accordance with the IRC; all units were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless as provided for in the IRC); each building was suitable for occupancy, taking into account Territorial health, safety, and building codes; there was no change in the eligible basis in the project, or an explanation if there was a change; all tenant facilities included in the eligible basis were provided on a comparable basis without charge; rentals of vacancies were done in accordance with the IRC; rentals of units were done in accordance with the IRC if any tenant's income increased above the limit allowed by the IRC; and a Restrictive Covenant document was in effect for the project, for those buildings receiving LIHTCs, all in accordance with the rules published by the Internal Revenue Service.

If the DBAS becomes aware of noncompliance, the Internal Revenue Service shall be notified in accordance with the rules published by the Internal Revenue Service.

Please consult with your tax attorney and/or LIHTC consultant regarding IRC regulations. Owners are responsible for keeping abreast of current Program requirements.

The guidelines outlined below pertain to projects allocated LIHTCs in American Samoa.

## **B. Compliance**

### **Owner/Manager Training**

Owners, managing agents, and on-site managers should attend or document that they have recently attended training on management and compliance prior to leasing any units, but no later than receipt of IRS Form 8609, which certifies an allocation of tax credits. Training may be required following significant or repeated noncompliance events. At minimum, such training should cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, next available unit procedures and unit vacancy rules, agency reporting requirements, record retention requirements, and site visits.

### **Set-Aside**

The project must comply with the low-income set-aside requirements of Section 42 of the IRC, as chosen by the owner at the time of receiving the LIHTCs. The minimum requirements are either:

1. 20 percent or more of the units in the project are occupied by tenants having a household income of 50 percent or less of the AMGI (the “20-50 requirement”),  
or
2. 40 percent or more of the units in the project are occupied by tenants having a household income of 60 percent or less of the AMGI (the “40-60 requirement”)

Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937, as directed by the IRC. Area median incomes are determined annually by the U. S. Department of Housing & Urban Development (HUD), and are available from the DBAS.

### **Rent**

Units in the project must be rent-restricted to either thirty percent (30%) of the median income adjusted for family size for the area in which the project is located or rent-restricted to thirty percent (30%) of the imputed income limitations based on unit size. This rent-restriction must be maintained throughout the Term of the Compliance and Extended-Use period. See ‘D. Rent Restrictions’ in this section for further information.

### **Term of Compliance**

Projects receiving a LIHTC allocation must comply with eligibility requirements for the initial 15-year period (compliance period), plus any other additional years (extended-use period) determined by elections indicated in the Restrictive Covenant Document. The Restrictive Covenant Document must be recorded before LIHTCs are allocated.

### **Annual Certification**

Compliance requirements (such as those listed in Section A – Summary above) must be annually certified by the owner in its submission of the Annual Report. The Annual Report includes the Owner’s Certificate of Continuing Program Compliance and shall be

submitted by February 1 of each year throughout the compliance/extended-use period. The Annual Report and supporting documentation verifying the information on the Annual Report must be kept for a minimum of 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, however, 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, in accordance with published IRS guidelines.

### **IRS Form 8609**

The project owner shall complete Part II of IRS Form 8609 and submit with subsequent Annual Report.

### **Qualified Basis Tracking Sheet (QBTS)**

This form shall be submitted annually until the required set-asides are established. Documents will provide information on original tenants qualifying each building for tax credits minimum set-asides, and other set-asides.

### **Status Reports**

This report is to be submitted annually by owners in such format as required by the DBAS to document and track the continuous compliance of LIHTC units. The documents shall report data that tenants are income eligible at move-in, that occupants of LIHTC units are re-certified at least on an annual basis, and that the unit rents are restricted. Documentation will also show compliance with the vacant unit rule and 140% rule. The tracking of LIHTC units substantiates the maintenance, increase or reduction of each BIN's qualified basis.

## **C. Qualifying Households**

Applicants for low-income units should be advised early in their initial visit to the project that there are maximum income limits that apply for these units. Management should explain to the tenants that the anticipated income of all persons expecting to occupy the unit must be verified and included on a Tenant Income Certification (TIC) prior to occupancy, and re-certified on an annual basis. Applicants should be informed of other IRS requirements such as the Student Rule and Re-certifications.

### **Unborn Children**

In accordance with the HUD Handbook 4350.3, the project owner shall include unborn children in determining household size and applicable income limits. Owner shall require documentation of pregnancy in such circumstances.

### **Student Households**

In accordance with the IRS, a household comprised entirely of full-time students may not be counted as a qualified household, unless the household meets at least one exception. Please refer to the IRC for additional guidelines on the exceptions. Owner

shall utilize a lease provision requiring tenants to notify the managing agent of any change in student status.

### **Calculating Anticipated Tenant Income**

Owner shall qualify tenants by calculating household income using the gross income the household anticipates it will receive in the 12-month period following the effective date of the initial certification or re-certification. Anticipated income should be documented in the tenant file by third party verification whenever possible, or by an acceptable alternate method of verification with documentation as to why third party verification was not available. Owner shall use current circumstances to project income, unless verification forms or other verifiable documentation indicate that an imminent change will occur. Owner shall refer to HUD Handbook 4350.3 REV-1 for guidance on the proper calculation and verification of income and assets per IRC regulations.

### **Certification**

Upon acceptance of an applicant to the project, a TIC must be completed for the applicant and certified to by the applicant and owner. This form is a legal document which, when fully executed, qualifies the applicants to live in the set-aside units in the project. The head, co-head, spouse, and all household members over the age of 18 years must sign the TIC.

The TIC must be executed along with the lease prior to move-in. No one may live in a unit in the project unless he is certified and under lease.

The original copy of the executed TIC form is to be retained in the applicant's file. The TIC and the supporting documentation verifying the TIC must be kept for a minimum of 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, however, 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, in accordance with published IRS guidelines.

### **Recertification**

For projects having less than 100% set-aside:

To ensure that each unit is complying with the LIHTC income restrictions, the DBAS requires:

- a) The owner to annually recertify each tenant's income and household composition and
- b) Each tenant to report certain changes in income and household composition which occur between regularly scheduled recertifications.

If the income of the tenants in a unit who have been previously verified increases above 140 percent of the applicable income limitation, the unit may continue to be counted as a low-income unit as long as the next available unit of comparable or smaller

size in the building is occupied by a qualified low-income tenant, and the rent continues to be restricted for the initial unit.

Each tenant's annual recertification is to be completed within one year of last recertification. The request for recertification shall be made between 90 and 120 days before the effective date, and it must clearly state that the tenant has ten (10) calendar days in which to contact the owner to begin recertification processing. The notice must also state the days and hours available for the interview, the information the tenant should bring to the interview, and how and whom to contact to schedule the interview.

Upon re-verification of the tenant's income, the owner shall complete a new TIC, which shall be certified to by the owner or owner's designee.

### **Past-Due Recertification**

A recertification is considered past-due if the TIC form for the tenant is not certified by the tenant and the owner within twelve (12) months of the last recertification.

## **D. Rent Restrictions**

Projects receiving LIHTCs must comply with following procedures:

- ❖ Units in the project must be rent-restricted to 30% of the imputed income limitations for each unit, based upon HUD area median incomes and size of units. Rents are imputed by bedroom size in the following manner: a unit which does not have a separate bedroom – 1 individual; and a unit with 1 or more separate bedrooms – 1.5 individuals per bedroom. The DBAS provides rent limits for projects receiving a LIHTC allocation.
- ❖ Gross rent does not include any payment for various rental assistance programs and support services assistance as outlined in Section 42 of the IRC. Gross rent must include any allowance for utilities save for telephone and cable service.

HUD publishes the area median incomes for each state/territory annually. Updated income limits must be implemented pursuant to IRS Revenue Ruling 94-57, "Taxpayers may rely on a list of income limits released by HUD until 45 days after HUD releases a new list of income limits, or until HUD's effective date for the new list, whichever is later." Rents may be increased accordingly as the area median income increases.

If the income of the tenants in a unit who have been previously verified increases above 140 percent of the applicable income limitation, the unit may continue to be counted as a low-income unit as long as the next unit of comparable or smaller size is occupied by a qualified low-income tenant, and the rent continues to be restricted for the initial unit.

## **E. Eviction of Tenants**

Once an eligible tenant has been certified and admitted to the project, the tenant may not be displaced solely due to an increase in the tenant's household income beyond the restricted limit.

## **F. Audits**

The project may be subject to a management audit by the DBAS annually but, at a minimum, once every three years. Notification of an audit shall be given to the owner at least 30 days prior to such audit. The results of the management audit and the recommendations for corrective action to protect and maintain the project shall be transmitted to the owner within 30 days following the completion of the audit.

The purpose of the audit will be to conduct a physical inspection of the building and/or project, and, for at least 20 percent of the project's low-income units, to inspect the units and review the low-income certifications, documentation supporting the certifications, and rent records for the tenants in those units. The audit may also consist of a review of first year tenant records, a review of the documentation supporting the Annual Report, and any other documentation necessary for the DBAS to make a determination as to whether the project is in compliance with the applicable sections of the IRC.

When conducting tenant file reviews, DBAS's reviews shall include, but not be limited to:

- ❖ Completed rental application, including certification of assets and disposal of assets, if applicable;
- ❖ Tenant income certification completed for move-in and current year, including all required signatures and dates;
- ❖ Income verification(s) completed and documented;
- ❖ Assets verified in accordance with IRC regulations;
- ❖ Student eligibility documentation;
- ❖ Lease and lease addenda completed at move-in;
- ❖ Utility allowance on file;
- ❖ Review of first year tenant records which qualified the project initially for tax credits.

The owner shall have a period of thirty (30) days in which to respond to the findings of the management audit. The DBAS shall review the owner's response to determine the extent to which the issues raised in the management audit letter are addressed. Findings, whether corrected or not, will be reported to the IRS.

See Section J below for information on notification to the IRS of any non-compliance found in the management audit.

## **G. Reporting Requirements**

1. The **LIHTC Annual Report** must be submitted annually by February 1 of each year throughout the compliance/extended-use period.
2. Part II of the **IRS Form 8609** must be completed by the owner and submitted with the initial Annual Report.
3. **Qualified Basis Tracking Sheets (QBTS)** are submitted at a minimum annually with the LIHTC Annual Report until all set-asides are established.
4. **Status Reports** are submitted annually by owners with the Annual Report to document and track the continuance compliance of tax credit units throughout the compliance/extended-use period.

These forms must be sent in to the DBAS at the address shown in Section II above.

The Tenant Income Certification and LIHTC forms listed above are available from the DBAS. Additionally, the DBAS has data regarding HUD area median incomes, maximum rental rates, income verification information, and third-party verification forms.

## **H. Fees**

A compliance monitoring fee of \$40.00 per unit for all units within each project shall be charged annually for administrative expenses. This fee shall be submitted with the LIHTC Annual Report for each year of the compliance/extended-use period. The DBAS reserves the right to adjust fees due to changing circumstances annually each January 1. It will be the responsibility of the DBAS to inform the owner of any changes in the annual compliance fee prior to the submission of fees. The compliance monitoring fee will be effective as of the Placed in Service date for the first building.

## **I. Non-Compliance Penalties**

The penalty for non-compliance with these procedures is the potential recapture of the credits awarded and interest on the amount recaptured. The IRS shall determine penalties for non-compliance.

Upon determination by the DBAS of non-compliance with the LIHTC Program, the owner shall be notified and given thirty (30) days to correct any discovered violations. In accordance with the IRS' published guidelines on compliance monitoring, the DBAS will be required to notify the IRS within forty-five (45) days after the end of the thirty day correction period, whether or not the non-compliance is corrected. The DBAS will be given the opportunity on the IRS form to indicate whether the owner has corrected the non-compliance. The DBAS may extend the correction period, up to a total of six (6) months, if it is determined by the DBAS that good cause exists for granting such an

extension. In such case, the IRS will not be notified until the end of the extended correction period.

## **J. Extended-Use Period**

During the Extended-Use Period, the DBAS is no longer required to report instances of non-compliance to the IRS. The Compliance during the Extended-Use Period (“EU Compliance Policy”) will concentrate on enforcing the requirements of the LIHTC program through the term of the Declaration of Restrictive Covenants for Low-Income Housing Credit recorded on the property.

The EU Compliance Policy is largely based on the procedures of the initial compliance period. Unless noted below, the policy and procedure for compliance during the initial compliance period shall continue to apply to the extended-use period.

### **Effective Date**

The extended-use compliance period shall be effective on the first day after the expiration of the compliance period for the last building placed in service in the project. Generally, the extended-use compliance period will begin on January 1 of the year after the expiration of the compliance period of the last building placed in service and be in effect until the end of the extended-use period.

### **Income and Rent Set-Aside**

Owners are subject to the Section 42 occupancy and rent restrictions required in the Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits.

### **Student Households**

The IRC student rule no longer applies during the extended-use period. However, as the DBAS wants to ensure that properties in the extended-use period are not used as dormitory housing, a modified student eligibility requirement will be enforced. During the extended-use period, a household comprised entirely of full-time students will qualify as long as at least one member of the household is an independent student or is a student in grades Kindergarten through 12 (including home schooled minors studying course material within these grades). An independent student is defined as one who is not claimed as a dependent on his/her parent’s tax return (proof required).

### **Available Unit / 140% Rule**

For projects which include market rate units, the Available Unit Rule and the 140% Rule do not apply during the extended-use period. The percentage of tax credit units as specified in the Declaration of Restrictive Covenants for Low-Income Housing Credits must be maintained throughout the extended-use period.

### **Certification and Recertification**

Certification of tenants at the time of move-in shall be required during the extended-use period according to the same procedure as the compliance period.

Recertification of tenants will not be required during the extended-use period. However, if any adults are added to the household, then the household must be re-certified.

### **Unit Transfers**

During the extended-use period, unit transfers are allowed without a new income qualification. Documentation of all unit transfers that occur shall be submitted as part of the Reporting Requirements.

### **Reporting Requirements**

- a) The LIHTC Annual Report must be submitted annually by February 1 of each year throughout the extended-use period.
- b) Status Reports are submitted annually by owners with the Annual Report to document and track the continuing compliance of tax credit units throughout the extended-use period.

### **Site Audits**

Commencing within three years after the expiration of the Compliance period, site audits for projects may be conducted at least every five years. Projects that have substantial outstanding non-compliance beyond the correction period based on the findings of the most recent site audit, may be subject to more frequent site audits.

### **Owner Inspection**

Owners shall conduct an annual physical inspection of each unit and common areas in the project.

### **Correction Period and Non-Compliance Penalties**

Upon determination by the DBAS of non-compliance with the LIHTC Program during the extended-use period, the owner shall be notified and given thirty (30) days to correct any discovered violations. The DBAS may extend the correction period on a case-by-case basis, up to a total of six (6) months, if it is determined by the DBAS that good cause exists for granting such an extension. Owners may request the DBAS to review all outstanding non-compliance issues for a property once per calendar year after the initial correction period.

Any owner and constituent entities involved in management and ownership of a project with an unresolved finding of non-compliance beyond the initial correction period may be deemed to be Not in Good Standing by the DBAS.

Owners must clear all outstanding non-compliance issues to be deemed in Good Standing with the DBAS.

## Appendix 1

# Comprehensive Market Study

In accordance with Section 42 (m)(iii) of the IRC, the DBAS requires a comprehensive Market Study of the housing needs of low-income individuals in the area to be served by the project by a disinterested third party must be submitted as part of this application. The Market Study shall be completed at the Owner's Expense.

The Market Study shall address the following information:

- ✓ A statement of the competence of the market analyst.
- ✓ A description of the proposed site.
- ✓ Demographic analysis of the number of households in the market area which are income eligible and can afford to pay the rent. Estimate of capture rates for the market areas.
- ✓ Geographic definition and analysis of the market area.
- ✓ Identification of the project including location, unit counts, income levels and target population. Market Study must be consistent with the proposed project.
- ✓ Analysis of household sizes and types in the market.
- ✓ A description of comparable developments in the market area.
- ✓ Analysis of practically available rents, vacancy rates, operating expenses, and turnover rates of comparable properties in the market area.
- ✓ Analysis of practically available rents, vacancy rates, operating expenses, and turnover rates of market rate properties in the market area.
- ✓ Expected market absorption of the proposed rental housing, including a description of the effect of the market area.
- ✓ Identification and commentary of proposed projects in the market areas.
- ✓ Analysis of market demand for tenants with special housing needs when applicable.

Projects that are requesting credits from eligible basis generated from a Community Service Facility as defined in Section 42 (d) (4) (C) (iii) must provide a market study that addresses the following:

- ✓ A description of Services provided that improve the quality of life for community residents.
- ✓ The market area and demand for services provided.
- ✓ The applicability of service provided to the community.
- ✓ The affordability of the services provided persons of 60% AMGI or less.