GOVERNMENT OF GUAM
LOW-INCOME HOUSING TAX CREDIT PROGRAM
2013 QUALIFIED ALLOCATION PLAN

I. Introduction

The Low-Income Housing Tax Credit (LIHTC) Program, created by the Tax Reform Act of 1986, is intended to encourage the construction or rehabilitation of low-income rental units. The regulations which govern this Program are contained in Section 42 of the Internal Revenue Code (the "Code" or IRC). 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 or families. The Guam Housing and Urban Renewal Authority (GHURA) has been designated as the agency responsible for the administration of the Federal Low-Income Housing Tax Credit Program for Guam.

In accordance with the Omnibus Spending Bill of 2000, Omnibus Budget Reconciliation Act of 1989 and the Budget Reconciliation Bill of 1990, GHURA developed this Qualified Allocation Plan (QAP) which sets forth (1) the criteria to evaluate and allocate tax credits to projects which best meet the housing needs of Guam, and (2) the procedure to monitor for compliance with the provisions of the Low-Income Housing Tax Credit Program.

The QAP will utilize a point system to rank projects based upon the evaluation criteria established. The ranking of projects, along with all other relevant data, will determine the priorities to be followed by GHURA 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, GHURA will review all relevant data required in the application. Projects selected under this QAP shall then be evaluated as to the minimum amount of tax credits required in order to make the project feasible.

This QAP shall be effective for reservations and awards of LIHTC for calendar year 2012 for $727,972 (unused) and calendar year 2013 for $2,590,000. The allocation plan is subject to amendment by the GHURA Board of Commissioners.

II. Application Process

Applications for the Low-Income Housing Tax Credit are available at GHURA's <u>main office in Sinajana</u> or by submitting a written request to GHURA at the address shown below.

The Guam Housing and Urban Renewal Authority (GHURA)
c/o Executive Director
117 Bien Venida Avenue
Sinajana, Guam 96910

Applications for tax credits should be submitted to GHURA by no later than the deadline indicated below.* GHURA shall have the right to defer the consideration of any application if such deferral is deemed in the best interests of meeting housing needs.

The deadline for submission of applications will be announced by GHURA in at least one of the two newspapers of general circulation in Guam and attached to the official application for the funding period being announced.

Application forms provided by GHURA must bear original signatures where signatures are required. No photocopies or other reproductions of documents with signatures will be accepted on these forms. Application should be computer-generated or typed. Handwritten applications are prohibited. Application should have content, formatting and pagination identical to that of the 2013 Application Form provided by GHURA. It should have no missing information or any information that is errorneous, incomplete or inconsistent. All attachments and supporting documentation required must be included in the Application packet.

GHURA shall review the application to ensure that it is complete and contains all required information. Complete applications shall then be evaluated in accordance with the QAP to determine the project's rank in relation to other projects in the evaluation. Projects must meet **a minimum score of 60 out of 100** to be evaluated to determine the minimum amount of tax credits required to make the project feasible. Projects with a score of 59 or less may not be evaluated. The amount of tax credits reserved or allocated to a particular project will be limited to the amount GHURA, in its sole discretion, deems necessary to make the project feasible.

The allocation plan will utilize a point system to rank projects based upon the evaluation criteria established. The ranking of projects, along with all other relevant data, will determine the priorities to be followed by GHURA 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, GHURA 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 market study in awarding the tax credits. If a minor clarification is required, applicant will be notified. Applicant will be given approximately one week to provide the information.

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

Applicants with ongoing or unfinished LIHTC projects are eligible to submit a 2013 LIHTC application if project has been 70% completed as determined by GHURA. A LIHTC project is considered completed if ALL units are Placed-in-Service and close-out process has been performed.

III. **Selection Criteria**

A. **Minimum Thresholds:**

Applicants must meet the following Minimum Threshold requirements to receive consideration for an allocation or award of Low Income Housing Tax Credits.

1. **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 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 6 months from the time of application will not be considered for an award of tax credits. Market Study requirements are specified in Appendix 1.

2. **Site Control:** To receive consideration for an award of LIHTC, the applicant must have control of the site in a form acceptable to GHURA. Evidence of site control shall be submitted with the application for Low Income Housing Tax Credits. Site control shall be substantiated by providing evidence in the form of an executed lease or sale option agreement, fee simple deed, executed land lease, or any other documentation acceptable to GHURA. Evidence of site control must be provided for all proposed sites.

IV. **Selection Criteria Point System**

Each application will be evaluated and awarded points in accordance with the following criteria. Unless otherwise indicated, all references to low-income unit(s) or low-income rental unit(s) shall mean low-income housing tax credit unit(s).

Application must have a **minimum score of 60 out of 100 points**.

	CRITERIA	**POINTS***
1	Project will provide low-income units for a longer period than is required under Section 42 of the Internal Revenue Code.	0 to 10
2	Project will provide a greater percentage of low-income units than required under Section 42 of the Internal Revenue Code.	1 to 10
3	Project's federal tax credit/low-income rental unit ratio.	0 to 5
4	Project has the appropriate zoning or the applicant has secured the necessary exemptions/variances to construct the project as proposed.	0 or 4

5	Project will serve tenant populations of individuals with children and provide 3-bedroom units or larger.	0 or 5
6	Project will give preference to special tenant populations.	0 or 10
7	Project is participating with a local tax-exempt organization and is sponsored by a qualified non-profit, as defined in Section 42 of the Internal Revenue Code.	0 or 5
8	Project is located in a qualified census tract, the development of which contributes to a concerted community revitalization plan as determined by GHURA.	0 or 2
9	Project location and market demand.	0 to 10
10	Developer experience.	(10) to 10
11	Applicant demonstrates that all low-income units will be made available to people holding valid Section 8 vouchers.	0 or 2
12	The ratio of total tax credits requested as a percentage of total project cost.	0 to 6
13	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 be limited to, the Rural Development 515 Loan Program and HUD Section 8 Project-Based Rental Assistance Program.	0 to 3
14	Local government support.	0 to 2
15	Developer will sell the units with a preference towards selling to current residents after 15 years.	0 or 1
16	Green building / Energy efficiency.	0 to 5
17	Overall project feasibility.	0 to 10

* See pages 4 -12 for description.

Criteria 1. Project will provide low-income units for a longer period than is required under Section 42 of the Internal Revenue Code.

Applicants electing to commit to an additional use period beyond the 15-year LIHTC compliance period (collectively the Extended Use Period) will be awarded points based on the table below. By making this election, the applicant elects to waive its right to exercise a request for a qualified contract pursuant to Section 42(h)(6)(E)(i)(II). The elections will be recorded in the Restrictive Covenant Document. Points will be awarded based on the following:

Additional Use Period (in addition to the 15 year compliance period) of:	**Points**
46 years or more	10 points
40 to 45 years	9 points
35 to 39 years	8 points
30 to 34 years	7 points
25 to 29 years	6 points
20 to 24 years	5 points
16 to 19 years	4 points
No additional use period	0 point

<u>Criteria 2</u>. Project will provide a greater percentage of low-income units than required under Section 42 of the Internal Revenue Code.

With respect to the set-aside affordability, if project provides:

20% of the project to households earning less than 50% of AMGI, or 40% of the project to households earning less than 60% of AMGI	1 Point
40% of the project to households earning 50% or less of AMGI, or 60% of the project to households earning 60% or less of AMGI	2 Points
60% of the project to households earning 50% or less of AMGI, or 80% of the project to households earning 60% or less of AMGI	3 Points
100% of the project to households earning 60% or less of AMGI	10 Points

<u>Criteria 3</u>. The ratio is derived as: “Total Federal Tax Credits Requested (Annual)/Total Number of Proposed Low-Income Rental Units”

Greater than	Less than	Points
$34,000.00		0
$29,000.00	$33,999.00	1
$26,000.00	$28,999.00	2

$23,000.00	$25,999.00	3
$20,000.00	$22,999.00	4
	$19,999.00	5

Criteria 4. Project has the appropriate zoning or the applicant has secured the necessary exemptions/variances to construct the project as proposed.

The applicant's readiness to proceed with the development of this project with respect to development approvals:

The applicant has obtained all necessary zoning and entitlements for the property, including subdivision approvals and upon receipt of credits, is ready to proceed with the development of the project (keeping the project concept within the allowable land use parameters) without any additional development approvals other than customary land disturbance and building permits. Acceptable documentation of property control must be in full force and effect, fully executed and include a correct legal description. — 4 Points

Project is not appropriately zoned and/or does not conform to Land Use regulations or requires variances, subdivision approval or any other exemption from any local or state land use restrictions. — 0 Points

Criteria 5. Project will serve tenant populations of individuals with children and provide 3-bedroom units or larger.

The project will serve tenant populations of individuals with children and will provide 3-bedroom and 4-bedroom units for at least 60% of all low-income units in the project.

If the answer to the question is NO — 0 Points

If the answer to the question is YES — 5 Points

Criteria 6. Project will give preference to special tenant populations.

Applicants may receive points for electing to serve one of these tenant populations.

Project will commit to serve the following tenant populations:

1) Tenant populations with special housing needs. Special needs groups are "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."

Projects may receive 10 points for this criterion if it commits to the following:
The project will set-aside at least 20% of all units for tenant populations with special housing needs. Persons with special housing needs may include the physically and mentally disabled. To receive consideration for this criterion:

- The project must commit to provide case management or services specific to this population or special facilities to accommodate the physically disabled.
- The Market Study shall specifically address the housing needs for the special needs group.

10 Points

-Or-

2) Elder or elderly households.

Projects may receive a total of 10 points, if all residential units in the project are set-aside for elders or elderly households.

10 Points

<u>Criteria 7</u>. Project is participating with a local tax-exempt organization and is sponsored by a qualified non-profit, as defined in Section 42 of the Internal Revenue Code.

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

If the answer to the question is NO	0 Point
If the answer to the question is YES, the organization must be a bonafide non-profit organization at time of application submission, as evidenced by the following: a) must be an IRS 501(c)(3) or 501(c)(4) entity; b) must be organized, existing, and qualified to do business in Guam; and c) must (i) not be formed by one or more individuals or for-profit entities for the principal purpose of being a local tax-exempt non-profit organization; (ii) not be controlled by a for-profit organization; and (iii) not have any staff member, officer or member of the board of directors who will materially participate, directly or indirectly, in the proposed development as or through a for-profit entity.	5 Points

Documents to show proof of bonafide non-profit status should be submitted with application.

Criteria 8. Project is located in a qualified census tract, the development of which contributes to a concerted community revitalization plan as determined by GHURA.

Project is located in a Qualified Census Tract. The project will redevelop existing housing, which contributes to a concerted community revitalization plan as determined by GHURA. For example: site is located in an Enterprise Community, Empowerment Zone, or part of a County redevelopment plan.

If the answer to the question is NO	0 Points
If the answer to the question is YES	2 Points

To receive consideration for this criteria, applicant must provide an explanation on how this project is in compliance with such plan and its benefit to the overall community. The applicant must provide a letter of interest or a binding agreement with the government agency administering the community revitalization plan.

Criteria 9. Project location and market demand.

Project location and market demand.	0 to 10 Points

Application must include a comprehensive Market Study of the housing needs of low-income individuals in the area to be served by the project. It must be conducted by a disinterested party. The Market Study must be completed at the Owner's expense. Any application which fails to submit a Market Study or submits a Market Study dated over 6 months from the time of application submittal, shall be returned to the applicant and will not receive further consideration.

Market Study requirements are specified in Appendix 1.

The points awarded will be based on GHURA's evaluation of following factors:

Employment opportunities, recreational facilities, shopping facilities, medical facilities located in the immediate vicinity of the project site	2 points
Documented/supported market demand	2 points
Proposed rental rates are below market rents for the immediate surrounding area	2 points
Housing characteristics (e.g., design, density) appropriate for neighborhood	2 points
Neighborhood conducive for senior or family use	2 points

Criteria 10. Developer experience.

Developer experience. -10 to 10 points

The points awarded will be based on GHURA's evaluation of the following factors:

Developer's (or any member/staff of the development team) experience or ability (or inexperience/inability) to successfully complete the project	-2 or 2 Points
Developer's success or failure in meeting the objectives of the program on past proposals	-2 or 2 Points
Development Team's success or failure in meeting the objectives of the program on past proposals	-2 or 2 Points
Development Team's experience or ability to successfully complete the project	4 Points
Project's general partner and/or affiliates has a history of chronic and/or substantive noncompliance, has failed to meet the requirements of the Declaration for Low-Income Housing Credits for previous projects, or has any significant tax credit history with other state tax credit allocating agencies.	-4 Points

Criteria 11. Applicant demonstrates that all low-income units will be made available to people holding valid Section 8 vouchers.

The applicant demonstrates that all low-income units will be available to people holding valid Section 8 vouchers.

If the answer to the question is NO 0 Point

If the answer to the question is YES and the applicant is able to demonstrate that all low-income units will be available to people holding valid Section 8 vouchers. 2 Points

Criteria 12. The ratio of total tax credits requested as a percentage of total project cost.

If total federal tax credit requested (gross) as a percentage of total project cost is:

Greater than 80% of total project cost	0 Point
71 % through 80% of total project cost	1 Point
61 % through 70% of total project cost	2 Points
51 % through 60% of total project cost	3 Points
41 % through 50% of total project cost	5 Points
40% or less of total project cost	6 Points

Criteria 13. 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 be limited to, the Rural Development 515 Loan Program and HUD Section 8 Project-Based Rental Assistance Program.

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 be limited to, the Rural Development 515 Loan Program and HUD Section 8 Project-Based Rental Assistance Program.

If the answer to the question is NO — 0 Point

If the answer to the question is YES — 1 to 3 points

If the whole project has project based subsidies then 3 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 / Tax credit and non-tax credit subsidized units," provided they are developed simultaneously.

Criteria 14. Local Government Support.

The project will receive a below market loan or grant from a Guam or local governmental agency other than GHURA which, in total amounts to 10% or more of the total development cost.

The project has not applied for a below market loan or grant from a government agency, or if the total amount applied for is less than 10% of total — 0 point development costs.

The project has applied for a below market loan or grant from a government agency. Documentation must be provided evidencing that an application for financing has been submitted. 1 point

The project has received a commitment from a government agency. A copy of a commitment letter or contractual agreement must be included in the application. 2 points

<u>Criteria 15</u>. Developer will sell the units with a preference towards selling to current residents after 15 years.

Projects offering tenants an opportunity 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 Internal Revenue Code. To receive consideration for the criteria, the applicant must provide a feasibility analysis addressing the tenant's ability to purchase the project. The applicant must also provide a plan discussing how the project will offer the units for homeownership to tenants.

If the answer to the question is NO 0 Point

If the answer to the question is YES 1 Point

<u>Criteria 16</u>. Green Building / Energy Efficiency

Projects electing to incorporate energy-efficient practices that promote resource conservation will be awarded points.

Projects that elect to include <u>all seven</u> of the listed features	5 points
Projects that elect to include four to six of the following features in their project	3 points
Projects that elect fewer than four of the following features in their project	0 point

Features:

- Installation of solar thermal, tank less, or tank-type water heaters that meet ENERGY STAR standards
- Installation of water conserving plumbing fixtures: water sense high efficiency toilets (less than 1.28 gallons per flush), showerheads with rated flow less than 1.75 gallons per

minute (gpm), kitchen aerators with rated flow less than 1.5 gpm, and bathroom aerators with rated flow less than 1.0 gpm

- Installation of five or more ENERGY STAR qualified light fixtures, ceiling fans equipped with lighting fixtures, and/or ventilation fans in each unit
- Installation of photo sensors or timers on all outdoor lighting and ENERGY STAR or high-efficiency commercial grade lighting fixtures (T8) in all common areas
- Installation of ENERGY STAR appliances including refrigerators, dishwashers, and clothes washers (horizontal axis) in each unit
- Reducing heat effects by using ENERGY STAR low emissive roofing products for at least 50 percent of the roof area; or a combination of high-albedo and vegetated roof covering 75 percent of the roof area. Reduce asphalt surface areas and use low emissive pavement coatings and materials for at least 25% of paved surfaces
- Provide an easily accessible area dedicated to recycling (at a minimum) newspaper, corrugated cardboard, glass bottles and jars, aluminum cans, and plastic containers (#1 and #2)

Upon completion of the project, a certification from a third party, architect, or engineer verifying the green building practices listed above have been used to construct or rehabilitate the building shall be submitted. Failure to provide the certification by six months after the issuance of the IRS Form 8609 will result in forfeiture of the good faith deposit.

Criteria 17. Overall project feasibility.

Overall Project Feasibility. 0 to 10 points

The points awarded will be based on GHURA'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	2 points
Operational feasibility (for example, unreasonable operating expenses)	2 points
Adequacy of Reserves including but not limited to Operating Reserve and Repair and Replacement Reserve	2 points
Services and amenities provided to tenants that will enhance the livability of the project	2 points
Adequacy of project contingencies in the development budget	2 points

V. **Rights of GHURA**

The awarding of tax credits rests solely with the GHURA Board of Commissioners.

GHURA reserves the right to disapprove any application or project for any tax credit reservation or allocation, regardless of ranking under the criteria and point system as contained in Sections III and IV of this QAP. GHURA shall have the authority to defer consideration of any application if such deferral is deemed in the best interest of meeting housing needs.

GHURA reserves the right, in its sole discretion, to (i) hold back a portion of the annual federal housing credit ceiling for use during later reservation cycles, (ii) carryover a portion of the current year's housing credit ceiling for allocation to a project which has not yet been Placed in Service, and (iii) under certain conditions, issue a reservation for the next year's housing credit ceiling.

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

GHURA may, at its sole discretion under certain circumstances, conduct a special round after the final scheduled round for a year for projects (i) where the applicant's tax counsel has attested to an itemization of how the ten percent test prescribed by Internal Revenue Code Section 42(h)(1)(E) will be met; (ii) which have no deficient application items; and (iii) for which all exhibits have been submitted ("Year-End Round"). Year-End Round projects will receive a Carryover Allocation, not a reservation of LIHTCs, which may contain certain conditions and time periods for satisfying them. The circumstances for conducting a Year-End Round are (1) availability of LIHTCs and (2) potential loss of LIHTCs to the national pool. When a Year-End Round is being conducted, applicants need to satisfy the above requirements in order to receive a Carryover Allocation; and LIHTCs will be processed on a first-come-first-served basis and allocated to the extent available and to the extent applications can be processed.

GHURA 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 GHURA member, officer, agent or employee shall be personally liable concerning any matters arising out of, or in relation to, the reservation or allocation of Low-Income Housing Tax Credits.

VI. **Fees**

The following fees are associated with the Low Income Housing Tax Credit program. GHURA reserves the right to adjust the fees due to changing circumstances annually each January 1. All fees shall be paid via Cashier's Check and made payable to the **Guam Housing and Urban Renewal Authority**.

Application Fee
An Application Fee of $1,500 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 federal tax credits reserved shall be payable at the time the executed binding agreement is submitted to GHURA. Upon allocation and issuance of the IRS Form 8609, sixty percent (60%) of the good faith deposit shall be retained by GHURA as an administrative fee. The remainder of the good faith deposit may be refunded to the applicant. Failure to meet any of the elections made in the scoring criteria at the time of application will result in the retention of the entire good faith deposit by GHURA.

Compliance Monitoring Fee
Please refer to Section 'VII. Compliance Monitoring Plan' for more details regarding the Compliance Monitoring Fee.

Qualified Contract Processing Fee
Qualified Contract Fee of $150 per unit for all units.

VII. **Compliance Monitoring Plan**

A. Summary

GHURA shall monitor compliance with all applicable Federal Program requirements for the period a project is committed to providing low-income rental units. GHURA 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 by GHURA. 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 total rental units that are low-income units; rent charged on each rental unit including utility allowances; number of occupants in each low-income unit for those buildings receiving tax credits prior to 1990; 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. GHURA 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 GHURA 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 Code; all units were for use by the general public and used on a no transient basis (except for transitional housing for the homeless as provided for in the Code); each building was suitable for occupancy, taking into account local 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 Code; rentals of units were done in accordance with the Code if any tenant's income increased above the limit allowed by the Code; and a Restrictive Covenant document was in effect for the project, for those buildings receiving credits after 1989, all in accordance with the rules published by the Internal Revenue Service.

If GHURA becomes aware of non-compliance, 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 Internal Revenue Code regulations. Owners are responsible for keeping abreast of current LIHTC Program requirements.

The guidelines outlined below pertain to projects allocated Federal Low Income-Housing Tax Credits in Guam.

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 Internal Revenue Code- as chosen by the owner at the time of receiving the credits. The minimum requirements are either:

1. 20 percent or more of the units are occupied by tenants having a household income of 50 percent or less of the area median gross income (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 area median gross income (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 Internal Revenue Code. Area median incomes are determined annually by the U.S. Department of Housing & Urban Development (HUD), and are available from GHURA.

Rent

Units in the project must be rent-restricted to either thirty (30) percent of the median income adjusted for family size for the area in which the project is located or rent restricted to thirty (30) percent 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 after January 1, 1990, must comply with eligibility requirements for the extended use period [initial 15-year period (compliance period), in addition to the 15 or more years (additional-use period)] determined by elections indicated in the Restrictive Covenant Document. The Restrictive Covenant Document must be recorded before credits are allocated.

Annual Certification

These and other compliance requirements as listed in Section ‘A. Summary’ must be certified annually by the owner through the 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.

Records Retention

The Annual Report and the 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 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

Owner shall complete Part II of IRS Form 8609 and submit with subsequent Annual Reports.

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 GHURA or its Authorized Delegate to document and track the continuous compliance of tax credit units. The documents 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 indicate compliance with the vacant unit rule and 140% rule. The tracking of tax credit 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 which apply to these tax credit qualified 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 Internal Revenue Service requirements such as the Student Rule and Recertification.

Unborn Children
In accordance with the HUD Handbook 4350.3, owner shall include unborn children in determining household size and applicable income limits. If permitted by state laws, owner shall require documentation of pregnancy in such circumstances.

Student Households
In accordance with the Internal Revenue Code, a household comprised entirely of full-time students may not be counted as a qualified household, unless the household meets at least one exception. Refer to the Internal Revenue Code for additional guidelines on the exceptions. Owner shall utilize a lease provision requiring tenants to notify 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 income verification or Recertification. 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 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 the owner. The form is a legal document which, when fully executed, qualifies the applicants to live in the set-aside units in the project.

The TIC must be executed along with the lease prior to move-in. No one may live in a unit in the project unless 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 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 100% LIHTC set-aside projects, annual recertification are not required after January 1, 2014. Owners must recertify households at least once on the first anniversary of their initial tenancy.

For projects with less than 100% set-aside:

To ensure each unit is complying with the LIHTC income restrictions, GHURA requires (a) the owner to annually recertify each tenant's income and household composition and (b) each tenant is to report certain changes in income and household composition which occur between regularly scheduled recertification.

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 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 60 and 90 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 tenant and owner within twelve months of the last recertification.

D. Rent Restrictions

Projects receiving Low-Income Housing Tax Credits after January 1, 1990 must comply with the 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.

- Gross rent does not include any payment for various rental assistance programs and supportive service assistance as outlined in Section 42 of the Code. Gross rent must include any allowance for utilities.

HUD publishes the area median incomes for each state and 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 GHURA or its Authorized Delegate 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 thirty (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 GHURA to make a determination as to whether the project is not in compliance with the Code.

When conducting tenant file reviews, GHURA's and its Authorized Delegate'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 addendums 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. GHURA 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. Non-compliance Penalties' for information on notification to the IRS of any non-compliance found in the management audit.

G. Rural Housing Service (RHS) and Tax-exempt Bond Issue Projects

In accordance with the published IRS guidelines on compliance monitoring, an exception may be granted to RHS projects under its section 515 program and buildings or projects of which 50 percent or more of the aggregate basis is financed with the proceeds of tax-exempt bonds.

The IRC regulations allow for exception of a building from the inspection requirement if the building is financed by RHS under the section 515 program, the RHS inspects the building [under 7 CFR part 1930(C)], and the RHS and the allocating agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the allocating agency of the inspection results. Irrespective of the physical inspection standard selected by the allocating agency, a low-income housing project under section 42 of the Internal Revenue Code must continue to satisfy local health, safety and building codes. A memorandum of understanding has not been executed between GHURA and RHS.

Annual Reports, QBTS, Compliance Monitoring Status Reports and other reports are still required of RHS projects. Although GHURA has allowed the use of the RD 1944-8, the form does not determine eligibility for specific LIHTC requirements. Owners need to determine whether the TIC will be used or a worksheet will be attached to RD 1944-8 to determine eligibility under the IRC. Management audits will still be conducted as indicated herein.

An owner who for some reason is not able to make any of the required certifications stated on the Annual Report or other requirements must inform the Agency immediately of such inability, as well as explain the reason for said inability.

H. Reporting Requirements

a. The LIHTC Annual Report must be submitted annually by February 1 of each year throughout the compliance/extended-use period.
b. Part II of the IRS Form 8609 must be completed by the owner and submitted with initial Annual Report.
c. Qualified Basis Tracking Sheets (QBTS) are submitted at a minimum annually with LIHTC Annual Report until all set-asides are established.
d. Status Reports are submitted annually by owners with 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 GHURA or its Authorized Delegate at the address shown in Section II.

The Certification of Eligibility and LIHTC forms listed above are available from GHURA. Additionally, GHURA has data regarding HUD area median incomes, maximum rental rates, income verification information and third party verification forms.

I. Fees

A compliance monitoring fee of up to $200 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. GHURA reserves the right to adjust fees due to changing circumstances annually each January 1. It will be the responsibility of GHURA 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.

J. 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 Internal Revenue Service shall determine penalties for non-compliance.

Upon determination by GHURA 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 Internal Revenue Service's published guidelines on compliance monitoring, GHURA 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. GHURA will be given the opportunity on the IRS form to indicate whether the owner has corrected the non-compliance. GHURA may extend the correction period, up to a total of six (6) months, if it is determined by GHURA 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.

K. Additional Use Period

After the initial 15-year compliance period of the Extended Use Period (“Additional Use Period”), GHURA is no longer required to report instances of non-compliance to the IRS. The Compliance during the Additional Use Period (“AU 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 AU 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 additional use period.

Effective Date
The AU Compliance Policy shall be effective on the first day after the expiration of the initial 15 year compliance period for the last building placed in service in the project. Generally, the additional use compliance period will begin on January 1 of the year after the expiration of the initial 15 year compliance period of the last building placed in service and be in effect until the end of the additional 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 additional use period. However, as the GHURA wants to ensure that properties in the additional use period are not used as dormitory housing, a modified student eligibility requirement will be enforced. During the additional 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 Rule / 140% Rule

For projects which include market rate units, the Available Unit Rule and the 140% Rule do not apply during the additional 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 additional use period.

Certification and Recertification

Certification of tenants at the time of move-in shall be required during the additional use period according to the same procedure as the compliance period. Recertification of tenants will not be required during the additional use period. However, if any adults are added to the household, then the household must be re-certified.

Unit Transfers

During the additional 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 **additional**-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 additional-use period.

Site Audits

Commencing within three years after the expiration of the Compliance Period, site audits for projects may be conducted at least once 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 GHURA of non-compliance with the LIHTC Program during the additional use period, the owner shall be notified and given thirty (30) days to correct any discovered violations. The GHURA 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 GHURA that good cause exists for granting such an extension. Owners may request the GHURA 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 GHURA Finance Department. Owners must clear all outstanding non-compliance issues to be deemed in Good Standing with the GHURA.

VIII. Appeal

All appeals shall be resolved in accordance with the GHURA's Appeals and Process Procedure, copies of which are maintained at the GHURA's office.

IX. Other

High Cost Area Designation Newly constructed buildings located outside of designated Difficult to Develop Areas or Qualified Census Tracts qualify as a high cost area. The additional LIHTC available from the "basis boost" will be used to offset the high cost of construction and land throughout the island.

Appendix 1
Market Study

In accordance with Section 42(m)(iii) of the Internal Revenue Code, GHURA requires a comprehensive Market Study of the housing needs of low-income individuals in the area to be served by the project. The Market Study is to be conducted by a disinterested party approved by GHURA and must be submitted as part of the application. The Market Study shall be completed at the Owner's expense. Any application which fails to submit a Market Study, or submits a Market Study dated over 6 months from the time of application, shall be returned to the applicant and the application will not receive further consideration.

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 and turnover rates of market rate properties in the market area. Projected operating funds and expenses, when available at the time of the study.
- 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 per sons of 60% AMGI or less