

**STATE OF HAWAII  
LOW-INCOME HOUSING TAX CREDIT PROGRAM  
2013/2014 QUALIFIED ALLOCATION PLAN**

**Table of Contents**

<b>I.</b>	<b>Introduction</b> .....	2
<b>II.</b>	<b>Application and Award Process</b> .....	3
<b>III.</b>	<b>Selection Criteria</b> .....	4
	A. Policy:.....	4
	B. Minimum Thresholds: .....	4
	C. Low Income Housing Tax Credit project financed with Tax-exempt Bonds:.....	5
	D. Criteria Point System: .....	6
<b>IV.</b>	<b>Rights of the HHFDC</b> .....	14
<b>V.</b>	<b>Fees</b> .....	15
<b>VI.</b>	<b>Compliance Monitoring Plan</b> .....	16
	A. Summary .....	16
	B. Compliance.....	17
	C. Qualifying Households.....	18
	D. Rent and Income Limits .....	20
	E. Eviction of Tenants .....	20
	F. Audits .....	21
	G. Rural Housing Service (RHS) and Tax-exempt Bond Issue Projects.....	21
	H. Reporting Requirements.....	22
	I. Fees.....	23
	J. Non-compliance Penalties .....	23
	K. Additional Use Period .....	23
<b>VII.</b>	<b>Other</b> .....	25
<b>VIII.</b>	<b>Qualified Contracts</b> .....	26
	<b>Appendix 1</b> .....	29

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**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 (“Section 42 IRC”). This 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 State of Hawaii created a State Low-Income Housing Tax Credit which is equal to fifty percent (50%) of the Federal tax credit allocated to a project. The Hawaii Housing Finance and Development Corporation (HHFDC) has been designated as the agency responsible for the administration of both Federal and State Low-Income Housing Tax Credit Programs for the State of Hawaii.

In accordance with the Omnibus Spending Bill of 2000, Omnibus Budget Reconciliation Act of 1989, the Budget Reconciliation Bill of 1990 and the Housing and Economic Recovery Act of 2008, the HHFDC developed this “Qualified Allocation Plan” which sets forth (1) the criteria to evaluate and allocate tax credits to projects which best meet the housing needs of the State and preferences required by Section 42 IRC, and (2) the procedure to monitor for compliance with the provisions of the LIHTC Program.

**This allocation plan shall be effective for reservations and awards of LIHTC for calendar years 2013 and 2014. The allocation plan is subject to amendment by the HHFDC Board of Directors.**

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

Applications for the LIHTC are available at the HHFDC's office or by submitting a written request to the HHFDC at the address shown below.

Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813  
ATTN: Finance Branch  
(808) 587-0567

Applications for tax credits should be submitted to the HHFDC no later than the indicated deadline. Upon receiving an application for tax credits, the HHFDC shall review the application to ensure that the application is complete and contains all required information. The executive director shall have the right to defer the consideration of any application if, in his/her sole discretion, such deferral is deemed in the best interests of meeting housing needs.

Complete applications shall then be evaluated in accordance with the allocation plan to determine the project's rank in relation to other projects in the evaluation. Projects receiving the highest ranking shall then be evaluated 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 HHFDC, 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 the HHFDC 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 HHFDC 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.

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.

### **III. Selection Criteria**

It is HHFDC's intent to maximize the use of the State's limited resources to address the substantial need for rental homes that are accessible and affordable to Hawaii's low-income households. Emphasis is placed on efficiently leveraging LIHTCs and other HHFDC financing resources to increase and sustain the supply of affordable rentals in communities that are suitable for such development.

#### **A. Policy:**

9% (volume cap) LIHTC to be used for the following:

1. New construction
2. Rehabilitation of existing inventory (no acquisition)

#### **B. Minimum Thresholds:**

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

##### **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.

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

To receive consideration for an award of LIHTC, the applicant must have control of the site in a form acceptable to the HHFDC. 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 the HHFDC. 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 additional use period (collectively the Extended Use Period). A capital needs assessment of the property by a competent third party shall be submitted with the application. A capital needs assessment is a qualified professional's opinion of a property's current physical condition. It identifies deferred maintenance, physical needs and deficiencies, and material building code violations that affect the property's use, structural and mechanical integrity, and future physical and financial needs. The Capital Needs Assessment shall identify any work that must be completed immediately to address health and safety issues, violation of Federal or State law, violation of local code, or any work necessary to ensure that the building can continue to operate as affordable housing.

**C. Low Income Housing Tax Credit project financed with Tax-exempt Bonds:**

Projects financed with tax-exempt private activity bonds may qualify for Low Income Housing Tax Credits in excess of the State's volume cap. Applicants may apply for an allocation of Low Income Housing Tax Credits with a commitment to issue private activity bonds from a state or local government. Applicants may submit an application for an allocation for Low Income Housing Tax Credits concurrently with an application for Private Activity Tax-exempt bonds from the HHFDC.

Applicants requesting tax credits must submit all documentation required in the application and will be subject to all feasibility reviews as required for an application for Low Income Housing Tax Credits from the State's volume cap. Applications for LIHTC outside of the State's volume cap will not be subject to the Criteria Scoring.

**D. 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 LIHTC unit(s).**

	<b>CRITERIA</b>	<b>POINTS</b>
1.	Project's total Federal tax credit requested and other permanent HHFDC financing/low-income rental unit ratio.	0-20
2.	Overall project feasibility.	0-20
3.	The ratio of developer fee as a percentage of total project cost.	0-8
4.	Project will be receiving project-based rental assistance subsidies for the first time.	0-8
5.	Local Government Support.	0-8
6.	Energy Efficient and Green Building.	0-8
7.	Project location and market demand.	0-8
8.	Developer experience.	0-8
9.	Project will provide low-income units for a longer period than is required under Section 42 IRC.	0-6
10.	Project will give preference to tenant populations.	0-6
11.	Project serving tenants with special housing needs.	0-6
12.	Project's federal tax credit/low-income rental unit ratio.	0-4
13.	Project will provide a greater percentage of low-income units than required under Section 42 IRC.	0-4
14.	Project is participating with a local tax-exempt organization and is sponsored by a qualified non-profit, as defined in Section 42 IRC.	0-3
15.	Applicant demonstrates that all low-income units will be made available, through a process acceptable to HHFDC, to people on the waiting list for low-income public housing and/or to people who have successfully completed an acceptable transitional housing program and are ready to move into permanent rental housing.	0 or 1
16.	Projects offering tenants an opportunity for home ownership.	0 or 1
17.	Project is located in qualified census tract, the development of which contributes to a concerted community revitalization plan as determined by HHFDC.	0 or 1
18.	Historic Nature.	0 or 1

**\* Refer to narrative section for more details.**

**Criteria 1**

The ratio is derived as: “Total Federal Tax Credit requested and other Permanent HHFDC Financing/Total Number of Proposed Low-Income Rental Units”.

Using the derived ratio and ranking the project against other applicants, points will be awarded based on the following:

20 points	Project with the lowest ratio
18 points	Project with the 2 <sup>nd</sup> lowest ratio
16 points	Project with the 3 <sup>rd</sup> lowest ratio
14 points	Project with the 4 <sup>th</sup> lowest ratio
12 points	Project with the 5 <sup>th</sup> lowest ratio
10 points	Project with the 6 <sup>th</sup> lowest ratio
0 points	All other projects

**Criteria 2.**

Overall Project Feasibility.

0 to 20 points

The points awarded will be based on HHFDC’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. For example, no unreasonable operating expenses;
- Applicant’s readiness to proceed with development of project. 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. (For example, lack of adequate financing sources; land use and zoning issues; utility, water, sewer availability.) The ability of the development team to resolve these issues such 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.

**Criteria 3.**

The applicant elects to limit the total Developer Fee as a percentage of the total development cost as presented in the application. The 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 the Developer Fee.

<b>Greater than or equal to</b>	<b>Less than</b>	<b>Points</b>
15%		0 points
14%	15%	1.25 points
12%	14%	2.50 points
10%	12%	3.75 points
8%	10%	5.00 points
6%	8%	6.25 points
	6%	8.00 points

**Criteria 4.**

Project will be receiving, for the first time, 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 points are awarded

If the answer to the question is YES 1 to 8 points are awarded\*

\* If the whole project has project based subsidies then 8 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 5.**

Local government support. The project will be receiving a permanent below market loan or grant from a State or local governmental agency other than HHFDC or a below market lease or sale of property from a government agency (including HHFDC).

The project has not applied for a below market loan or grant from a government agency. 0 points

The project has applied for a below market loan or grant from a government agency other than the HHFDC. Documentation must be provided evidencing that an application for financing has been submitted. 2 point

The project has received a commitment for a permanent below market loan, or grant, or a commitment for a below market lease or sale of property of less than 10% of the total development cost.. A copy of a commitment letter, government action or contractual agreement must be included in the application. 5 points

The project has received a commitment for a permanent below market loan, or grant, or a commitment for a below market lease or sale of property of greater than 10% of the total development cost. A copy of a commitment letter, government action or contractual agreement must be included in the application.

8 points

**Criteria 6.**

Energy Efficiency and Green Building. Projects must meet the minimum requirements for the design and construction of buildings for the effective use of energy as required by Section 107-25, Hawaii Revised Statutes and as set forth in Chapter 181 of Title 3, Hawaii Administrative Rules, entitled “State Energy Conservation Code”.

Projects which promote smart growth, energy, and water conservation, operational savings and sustainable building practices in affordable housing design may be awarded up to 8 points as follows:

Energy Star Homes/Multifamily New Construction	Enterprise Green Communities	LEED for Homes	National Green Building Standard	No. Points
Certified				1
		Certified	Bronze	2
	Certified	Silver	Silver	4
		Gold	Gold	6
		Platinum	Emerald	8

[http://www.energystar.gov/index.cfm?c=new\\_homes.hm\\_index](http://www.energystar.gov/index.cfm?c=new_homes.hm_index)

<http://www.enterprisecommunity.com/solutions-and-innovation/enterprise-green-communities>

<http://greenhomeguide.com/program/leed-for-homes>

<http://www.nahbgreen.org/NGBS/default.aspx>

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 may result in forfeiture of the good faith deposit.

**Criteria 7.**

Project location and market demand.

0 to 8 points

The points awarded will be based on HHFDC’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?
- Is the project or housing characteristics (e.g., design, density) appropriate for the neighborhood? Does project appear to satisfy market need? Is there documented/supported market demand?
- Is location in the neighborhood conducive for senior or family residential use?
- Consideration of any issues that would affect the marketability of the proposed project.

**Criteria 8.**

Developer experience.

0 to 8 points

The points awarded will be based on the HHFDC'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 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.

**Criteria 9.**

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

Points will be awarded based on the following:

<b>Total Extended Use Period (Total Length of Affordability Commitment):</b>	<b>Points</b>
61 years or more	6 points
55 to 60 years	5 points
50 to 54 years	4 points
45 to 49 years	3 points
40 to 44 years	2 points
35 to 39 years	1 point
Less than 35 years	0 points

**Criteria 10.**

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

1. **Elder or elderly households.**

Elderly projects receive 3 points.

OR

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 6 points for this criteria. Projects providing units that are 2-bedrooms or larger for at least 10% of all low-income units may earn 1 to 6 points according to the following schedule:

10% to 19% of the total units	1.5 point
20% to 29% of the total units	3.0 points
30% to 39% of the total units	4.5 points
40% or more of the total units	6.0 points

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

**Criteria 11.**

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

For the purpose of this Qualified Allocation Plan, “special housing needs” mean 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.

Projects may receive up to 6 points for the criteria if it commits to provide services that will enhance the livability of the project for tenant populations with special housing needs. The amount of points awarded is based on the quantity and quality of services provided and the

status of commitment. The maximum 6 points will be awarded only to applicants that have an executed commitment to serve this 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.

**Criteria 12.**

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

<b>Annual LIHTC / LIHTC Unit</b>		
<b>Greater than</b>	<b>Less than</b>	<b>Points</b>
\$19,000		0 points
\$16,000	\$18,999	1 point
\$13,000	\$15,999	2 points
\$10,000	\$12,999	3 points
	\$9,999	4 points

**Criteria 13.**

Project will set-aside a greater percentage of low-income units than required under Section 42 IRC. The maximum of 4 points will be awarded to the project that commits to set-aside all of its units to tenants earning 50% AMGI or less. Projects may score points for committing to set-aside units at 60% AMGI based on the weighted scoring formula summarized below.

- 50% of AMGI or less = 1.0 point
- 60% of AMGI or less = 0.6 point
- Greater than 60% AMGI = 0 points

**Example:**

<b># of units</b>	<b>Income Target</b>	<b>% of units</b>	<b>Score</b>	<b>Weighted Score</b>
55	50% AMGI or less	55%	1.0 point	2.20
40	60% AMGI or less	40%	0.6 point	0.96
5	Over 60% AMGI	5%	0 points	0.00
100	Total			3.16
A		B (A /Total Units)	C	(B x C) x 4

- If the proposed income restriction for the project does not match the income restrictions cited above, the incomes should be rounded up to the next applicable category.

- The income restrictions shall be included as part of the declaration of land use restrictive covenants based on unit count.

**Criteria 14.**

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

If the answer to the question is NO 0 points

If the answer to the question in YES 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

**Criteria 15.**

The applicant demonstrates that all low-income units will be made available to people on the waiting list for low-income public housing and/or people who have successfully completed a transitional housing program. The applicant will provide a copy of a letter sent to the local public housing authority which administers the public housing waiting list, stating that the applicant will accept referrals of individuals and families on the public housing waiting list for consideration to lease units in the project. The applicant will provide a copy of a letter sent to the Department of Human Services stating that the applicant will accept referrals of individuals and families who have successfully completed a transitional housing program and are ready to move into permanent rental housing.

The low-income units will not be made available to people on the waiting list for low-income public housing and/or an acceptable transitional housing program. 0 points

The low-income units will be made available to people on the waiting list for low-income public housing. (Letter submitted to the Hawaii Public Housing Authority.) 0.50 point

The low-units will be made available to people referred by the Department of Human Services that have successfully completed a transitional housing program and are ready to move into permanent rental housing. (Letter submitted to the Department of Human Services; Benefit, Employment and Support Services Division; Attn: Homeless Programs; 820 Mililani St. Ste. 606; Honolulu, HI 96813.) 0.50 point

**Criteria 16.**

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 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 points  
If the answer to the question in YES 1 point

**Criteria 17.**

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 HHFDC. 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 in YES 1 point

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 18.**

Historic Nature. The proposed project will preserve the historic nature of an existing building. Preservation of building(s) on a national or state historic registry will receive 1 point.

If the answer to the question is NO 0 points  
If the answer to the question in YES 1 point

**IV. Rights of the HHFDC**

**The HHFDC 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 section III of this allocation plan. The executive director or his/her designated representative shall have the authority to defer consideration of any application if, in his/her sole discretion, such deferral is deemed in the best interest of meeting housing needs.**

**The HHFDC reserves the right, in its sole discretion, to (i) hold back a portion of the annual state and federal housing credit ceiling for use during later reservation cycles, (ii) 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 (iii) under certain conditions, issue a reservation for up to 25% of the next year's housing credit ceiling.**

**The HHFDC is required under the I.R.C. 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 the HHFDC. The HHFDC 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.**

**The HHFDC 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 member, officer, agent, or employee shall be personally liable concerning 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 Low Income Housing Tax Credit program. The HHFDC 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 Hawaii Housing Finance and Development Corporation.

**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 credited reserved shall be payable at the time the executed binding agreement is submitted to the HHFDC. Upon allocation and issuance of the IRS Form 8609, sixty percent (60%) of the good faith deposit shall be retained by the HHFDC as an administrative fee. The remainder of the good faith deposit may be refunded to the applicant. Failure by Owner 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 the HHFDC. Any said failure shall be determined by HHFDC in its sole discretion.

**Compliance Monitoring Fee**

Please refer to Section VI. 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.

## **VI. Compliance Monitoring Plan**

### **A. Summary**

The HHFDC shall monitor compliance with all applicable Federal and State Program requirements for the period a project is committed to providing low-income rental units. The HHFDC 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 HHFDC. 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 (IRS). The HHFDC 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 LIHTC projects will be required to certify to HHFDC 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 Section 42 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 Section 42 IRC); 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 Section 42 IRC; rentals of units were done in accordance with Section 42 IRC if any tenant's income increased above the limit allowed by Section 42 IRC; 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 IRS.

If the HHFDC becomes aware of non-compliance, the IRS shall be notified in accordance with the rules published by the IRS.

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

The guidelines outlined below pertain to projects allocated Federal and State LIHTC in the State of Hawaii.

## **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 IRC 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 in the project 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 HUD and are available from the HHFDC.

### **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 and Income Limits’ 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.

Electronic storage of records is allowed by the IRS. However, HHFDC encourages the retention of hard copies of the first year records.

**IRS Form 8609**

Owner shall complete Part II of the 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 HHFDC 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 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. Applicants should be informed of other IRS requirements such as the Student Rule and Recertifications.

**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 initial certification 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 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 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 head, co-head, spouse and all household members over 18 years of age 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 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 recertifications are not required after January 1, 2009. Owners must recertify households at least once on the first anniversary of their initial tenancy.

For projects with less than 100% LIHTC set-aside:

To ensure each unit is complying with the LIHTC income restrictions, the HHFDC 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 recertifications.

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 reverification 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 and Income Limits**

Projects 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. The HHFDC provides rent limits for projects receiving a LIHTC allocation.
- Gross rent does not include any payment for various rental assistance programs and supportive service assistance as outlined in Section 42 IRC. Gross rent must include any allowance for utilities.

HUD publishes the area median incomes for each state 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 HHFDC 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 the HHFDC to make a determination as to whether the project is not in compliance with Section 42 IRC and Section 235-110.8 of the Hawaii Revised Statutes.

When conducting tenant file reviews, HHFDC'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. The HHFDC 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 the following Section J 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 IRC must continue to satisfy local health, safety and building codes. A memorandum of understanding has not been executed between the HHFDC and RHS.

Annual Reports, QBTS, Compliance Monitoring Status Reports and other reports are still required of RHS projects. Although the HHFDC 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 the initial Annual Report.
- c. **Qualified Basis Tracking Sheets** 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 the Annual Report to document and track the continuance compliance of tax credit units throughout the compliance/extended-use period.
- e. A copy of the applicable schedule, report or model used to calculate the utility allowance, submitted annually with the Annual Report.
- f. Annual submission of required tenant data in accordance with the Housing and Economic Recovery Act of 2008.

These forms must be sent in to the HHFDC or its Authorized Delegate at the address shown in Section II.

The Tenant Income Certification and LIHTC forms listed above are available from the HHFDC. Additionally, the HHFDC 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 \$25 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 HHFDC reserves the right to adjust fees due to changing circumstances annually each January 1. It will be the responsibility of the HHFDC 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 IRS shall determine penalties for non-compliance.

Upon determination by the HHFDC 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 HHFDC 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 HHFDC will be given the opportunity on the IRS form to indicate whether the owner has corrected the non-compliance. The HHFDC may extend the correction period, up to a total of six (6) months, if it is determined by the HHFDC 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”), the HHFDC 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 HHFDC 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 HHFDC 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 HHFDC 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 HHFDC that good cause exists for granting such an extension. Owners may request the HHFDC 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 HHFDC Finance Branch.

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

**VII. Other**

- A. **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 state.
  
- B. **Minimum Rehabilitation Requirement**  
Minimum rehabilitation expenditures must be the greater of the minimum rehabilitation threshold identified in Section 42 IRC or the cost of work identified by the Capital Needs Assessment attributable to address immediate repairs, replacements or upgrades.

## VIII. Qualified Contracts

The Omnibus Reconciliation Act of 1989 required that all properties receiving an allocation of Housing Credits after January 1, 1990 are subject to an additional use period that extended the minimum affordability period of credit properties from 15 to 30 years. The 1989 Act also provided an option for owners to present a Qualified Contract (“QC”) for the acquisition of the property by a prospective buyer that agrees to purchase the property for the “qualified contract price”<sup>1</sup>. If the state agency is not able to find a buyer to purchase the building at the “qualified contract price”, the additional use period is terminated.

Owners that elected to waive their option to request a Qualified Contract are not eligible.

After the last day of the fourteenth year of the compliance period of the last building placed in service or the last day of the last year of a multiple year allocation, an eligible owner of the project utilizing federal LIHTCs may request a QC<sup>2</sup>.

### **Qualified Contract Request:**

The legal owner must first submit a written request to the HHFDC Executive Director for consideration to present a qualified contract request (the “Request”). The Request must also include a copy of the First year 8609s showing Part II completed for all buildings placed in service.

After receiving the Request, the Corporation shall conduct a review to determine the eligibility of an owner to submit an Inquiry, by confirming the following:

1. the original owner did not waive its right to request a QC during the allocation of the tax credits;
2. the tax credit property meets the basic physical compliance standards that are necessary to claim credits;
3. the owner has secured waivers of any purchase option and right of first refusal connected to the property;
4. the project and owners are in compliance and all programmatic requirements and are in good standing with the HHFDC.

If after the review of the Request, the Corporation determines the Owner is not eligible to submit a Qualified Contract Request Application the Owner will be notified in writing.

The owner must correct any deficiencies noted in the recent compliance monitoring before submittal of a request for a QC.

### **Qualified Contract Request Application:**

The Owner must file a complete Qualified Contract Request Application (“QC Application”) with the HHFDC on such form(s) as the Executive Director (“Director”) may require from time to time as prescribed. The QC Application includes any documents and any additional information as

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<sup>1</sup> IRC Section 42 (h) (6) (E) (i) (II)

<sup>2</sup> IRC Section 42 (h) (6) (I)

may be requested by the Corporation in order to comply with the Internal Revenue Code (IRC) §42(h)(6)(F).

The QC Application shall include the Owner's proposed QC price. The QC Application shall include a report calculating the QC price prepared by an independent certified public accountant ("QC Report"). The QC Report will list all due diligence reviewed and provide a detailed calculation of the QC price. The QC Report will include an opinion and certification that the QC price was calculated in accordance with the Internal Revenue Code §42(h)(6)(F). The certified public accountant will provide a reliance letter with regard to the report and certification of QC price in the favor of the HHFDC.

1. The owner will submit the following documents as part of its Application:
  - a. QC Report;
  - b. QC processing fee of \$150 per unit for all units;
  - c. copies of all annual partnership tax returns;
  - d. copies of annual audited project financial statement for all years;
  - e. copies of loan documents for all secured debt during the compliance period;
  - f. copies of partnership agreement (original, current and all interim amendments);
  - g. current title report (no more than 60 days from the date of QC Application);
  - h. a physical needs assessment for the entire project (no more than 60 days from the date of QC Application);
  - i. an appraisal prepared by a qualified third party appraiser for the entire project (no more than 60 days from the date of QC Application);
  - j. a Phase I environmental (no more than 60 days from the date of QC Application); and
  - k. any other documents, certifications, application forms or agreements required by the HHFDC.
  
2. The Owner must make the following documents available to interested buyers such that the buyers may conduct their due diligence:
  - a. copies of annual audited project financial statement for all years;
  - b. copies of loan documents for all secured debt during the compliance period;
  - c. copies of partnership agreement (original, current and all interim amendments);
  - d. current title report (no more than 60 days old from the date of QC Application);
  - e. a physical needs assessment for the entire project (no more than 60 days from the date of QC Application);
  - f. an appraisal prepared by a qualified third party appraiser for the entire project (no more than 60 days from the QC Application);
  - g. a Phase I environmental report (no more than 60 days from the QC Application); and
  - h. other relevant documents.

**Other Terms:**

1. The Corporation may procure a third party contractor to provide services related to the valuation, review or inspection of the property. Owners are responsible for any costs associated with contacting and procuring the third party providers.
2. The Corporation may reject a QC Application if the Owner does not provide the proper documentation, information on the required forms or pay for the items listed below.
3. The 1 year period does not start until the Owner submits a complete QC Application with all required documents to the satisfaction of the Corporation.

4. The Owner will agree to release the documents listed above to interested parties. Copies of such documents will be the responsibility of the owner.
5. The Owner also agrees to allow the HHFDC to advertise the property and the Qualified Contract price. Such advertising may include but is not limited to posting on the HHFDC website, marketing through an agent, broker or consultant and mailings to interested buyers.
6. The Corporation will not bind the Owner to submit a request and will not start the one-year period (“1YP”) defined in §42(h)(6)(I) until the Corporation receives a complete QC Application.
7. Owners may choose to cancel the QC Application at anytime during this process.  
**However the owner will only be able to request a QC once during the entire additional use period of the project. Withdrawing the application will count as the only time an owner can request a QC Application.**
8. Under IRC §42(h)(6)(E)(i)(II), the Corporation’s only obligation is to “present” to the Owner a bona fide contract signed by a prospective buyer to acquire the Owner’s project for the QC price (the “Contract”). When the Corporation presents the Contract to the Owner, regardless of when or if the Contract is fulfilled, the possibility of terminating the additional use period is removed and the project remains bound to the additional use restrictions, and shall not terminate, the additional use agreement.
9. The buyer shall submit a form of Qualified Contract to the Owner that clearly states the intent to purchase the property for the Qualified Contract price. A copy of the Qualified Contract shall be forwarded to the HHFDC by the buyer or the Owner. The Owner and the buyer are free to negotiate different transaction terms.
10. In keeping with the purpose of IRC §42, the Corporation will resolve any case of doubt or interpretation in determining the QC price, both with regard to the overall process and particular projects, in favor of the lower QC price.
11. Please note that the IRS may clarify its regulations regarding the treatment of certain costs and valuations in calculating the QC price. The IRS regulations will be used upon publication of its rules with regard to the Qualified Contract.

## **Appendix 1 Market Study**

In accordance with Section 42 (m)(iii) of the Internal Revenue Code, the HHFDC 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 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 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.