

**STATE OF HAWAII  
LOW-INCOME HOUSING TAX CREDIT PROGRAM  
2019/2020 QUALIFIED ALLOCATION PLAN**

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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 (IRC). This Program provides Federal LIHTC 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 LIHTC which is equal to fifty percent (50%) of the Federal LIHTC 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 LIHTC Programs for the State of Hawaii.

In accordance with Section 42 of the IRC, the HHFDC developed this Qualified Allocation Plan (QAP) which sets forth (1) the criteria to evaluate and allocate LIHTC to projects which best meet the housing needs of the State and preferences required by Section 42 of the 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 the calendar year 2019 and 2020. The QAP 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 LIHTC should be submitted to the HHFDC no later than the indicated deadline. Upon receiving an application for LIHTC, 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 and accepted 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 further evaluated to determine the minimum amount of LIHTC required to make the project feasible. The amount of LIHTC reserved or allocated to a particular project will be limited to the minimum amount the HHFDC, in its sole discretion, deems necessary to make the project feasible.

The allocation plan utilizes a point system to facilitate project ranking based on the established evaluation criteria. **The point system is an important component in determining project ranking. However, the point system may not be the sole determining factor for LIHTC awards.** In addition to the point system, HHFDC may consider other relevant factors that it deems to be in the best interest of affordable housing the State of Hawaii, including, but not limited to:

1. Development team experience and performance;
2. Financial condition and performance;
3. Related developments;
4. Development timing;
5. Tenant health and safety;
6. "At-risk" conversions;
7. Housing inventory;
8. Affordable housing policies at the State and County levels;
9. Development and operating budgets; and
10. Market conditions.

### 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 serving lower income people and 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:

1. Applicants may apply for 9% (volume cap) LIHTC to develop, construct, rehabilitate, or preserve a qualified low-income building under the following scenarios (the definition of qualified low-income building follows Section 42 of the IRC):
  - a. Construction of a New Building. The term "New Building", as defined by Section 42 of the IRC, is "a building the original use of which begins with the taxpayer."
  - b. Rehabilitation of an Existing Building used for housing. The term "Existing Building", as defined by Section 42 of the IRC, is "any building which is not a new building". Acquisition LIHTC disallowed: Existing Buildings under this category **must** exclude acquisition costs of real estate, buildings, and depreciable assets from eligible basis. This category includes the conversion of Existing Buildings used for transient housing to a qualified low-income building. The conversion of Existing Buildings used for transient housing, as with all qualified low-income buildings, must: (i) meet minimum rehabilitation requirements; (ii) be suitable for occupancy; and (iii) be for use other than on a transient basis, as stipulated and defined by Section 42 of the IRC.
  - c. Acquisition/Rehabilitation of an Existing Building not used for housing. To qualify under this category, housing use of the Existing Building, if applicable, cannot have occurred for a period of at least 10-years from the date of its acquisition by the taxpayer. Acquisition LIHTC allowed: Existing Buildings under this category **may** include acquisition costs of buildings and depreciable assets in eligible basis. The conversion of Existing Buildings not used for housing, as with all qualified low-income buildings, must: (i) meet minimum rehabilitation requirements; (ii) be suitable for occupancy; and (iii) be for use other than on a transient basis, as stipulated and defined by Section 42 of the IRC.
  - d. HHFDC shall limit awards of 9% (volume cap) LIHTC to no more than one (1) project per calendar year under Section III (A) (1) (b) of the QAP.
2. Project owner/applicant must be established and registered with the State of Hawaii.

**B. Minimum Thresholds:**

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

**Failure to meet any Minimum Threshold shall result in the immediate rejection of the application.**

**Minimum Thresholds are subject to verification by HHFDC. See Section IV – Compliance with Commitments and Representations.**

**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 submitting a Market Study dated over 6 months from the time of application will not be considered for an award of LIHTC.

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 the HHFDC. Evidence of site control shall be submitted with the application for LIHTC. Site control shall be substantiated by providing evidence in the form of an executed lease or sales 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.

**All lease terms must extend a minimum of 5 years past the affordability commitment period.**

**3. Capital Needs Assessment (For projects acquiring an existing property. All units need to be reviewed.)**

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.

#### **4. Public Housing Waitlist/Homeless Services Programs**

Applicant shall certify that all low-income units will be made available to people on the waiting list for low-income public housing and/or an acceptable shelter program. The following shall be submitted with the application:

- a. Public Housing Waitlist/Homeless Services Certification (refer to exhibit list of the Consolidated Application).
- b. Copy of the letter submitted to the local public housing authority which administers the public housing waiting list (refer to exhibit list of the Consolidated Application).
- c. Copy of the letter submitted to the Department of Human Services, Homeless Programs Office (refer to exhibit list of the Consolidated Application).

#### **5. Smoke Free**

All projects will be smoke free. Owners must prohibit smoking in all indoor common areas, individual living areas (including balconies and lanais), and within 25 feet of building entries or ventilation intakes. A non-smoking clause must be included in the lease for each household. Submit certification (refer to exhibit list of the Consolidated Application).

#### **6. Contractor Profit Limitation**

- a. Contractor's profit, including general requirements and overhead, shall not exceed 14.0% of hard construction costs.
  - i. Contractor General Requirements include insurance, security, fencing, etc.
- b. The Project shall evidence compliance with this section at application through Exhibit Bravo – Project Budget/Uses Worksheet of the Consolidated Application.
- c. The Project shall evidence compliance with this section at project completion through the audited final cost certification.
- d. The contractor profit limitation is a requirement of the developer and the contractor.
- e. Contractor Profit Percentage is calculated as follows:
  - i. Contractor Profit (numerator) is the sum of the following items on Exhibit Bravo:
    - Site Work: Contractor Profit
    - Site Work: Contractor Overhead
    - Site Work: Contractor General Requirements
    - New Building/Rehabilitation: Contractor Profit
    - New Building/Rehabilitation: Contractor Overhead
    - New Building/Rehabilitation: Contractor General Requirements
  - ii. Construction Costs (denominator) is the sum of the following items on Exhibit Bravo:
    - Site Work: Cost
    - New Building/Rehabilitation: Cost
    - Excluding Contractor Profit for Sitework and New Building/Rehabilitation
  - iii. Contractor Profit Percentage is Contractor Profit divided by hard Construction Costs and shall not exceed 14.0%
  - iv. If there are multiple prime contractors, each contractor's profit, including general requirements and overhead, shall not exceed 14.0% of the hard construction costs for that contract.

## 7. Debt Service Ratio

- a. Project **with hard debt service** requirements **with or without** an application for an RHRF Project Award Loan:
  - i. The Project is required to evidence a Debt Service Ratio of no less than 1.15x on all hard debt service requirements for the duration of the initial 15-year LIHTC compliance period. Applicants may underwrite an RHRF Project Award based on required terms, including cash flow contingent payments.
- b. Projects with **no** hard debt service requirements **and applying** for an RHRF Project Award Loan:
  - i. The Project is required to evidence a Debt Service Ratio of no less than 1.15x on the requested RHRF loan for the duration of the amortization period. The Applicant **is required** to use the following assumptions in underwriting the RHRF loan:
    1. Interest Rate: Long-Term Applicable Federal Rate in effect for the month the Consolidated Application is released.
    2. Amortization: Full Amortization over 35 years.
- c. Projects with **no** hard debt service requirements **and not applying** for an RHRF Project Award Loan:
  - i. The Project **is required** to evidence positive Net Operating Income throughout the 50-year proforma period in the Consolidated Application.
- d. Hard Debt Service:
  - i. Defined as scheduled regular and periodic principal and/or interest payments of project loan obligations made for its direct benefit, as evidenced by a note and loan agreement.
  - ii. The Applicant is required to support all hard debt service loans and terms with executed lenders' commitment letters, letters of interest, or term sheets under Exhibit 27 of the Consolidated Application.
- e. Underwriting Criteria and Requirements:
  - i. The Project shall evidence compliance with this section through Exhibit E – Operating Proforma of the Consolidated Application.
  - ii. Applicants are required to use the following parameters and assumptions in the preparation of Exhibit E:
    1. Annual Income Inflation Rate of 2.0% and Annual Expense Inflation Rate of 3.0% for the first 15 years or term of the first mortgage, whichever is greater.
    2. Annual Income Inflation Rate of 2.0% and Annual Expenses Inflation Rate of 2.0% for the remaining term of affordability.
    3. Vacancy Rate of no less than 5.0%
    4. Annual Replacement Reserve Allocation of no less than \$300 per unit per year.

## 8. Phase I Environmental Assessment

Required for all applications.

For acquisition/rehabilitation projects, the Phase I Environmental Assessment should address lead based paint and asbestos.

**9. Proof of Non-Profit Status**

If applying under the Federal non-profit set aside, submit the following:

- a. Articles of Incorporation
- b. Copy of a current 501(c)(3) IRS Tax Exemption Letter

**10. Developer Fee - Developer Fee includes developer fee, developer overhead, management fee, consultant fee, etc. (as indicated in the Developer Fee section of Exhibit Bravo and Exhibit Bravo-3 of the Consolidated Application).**

- a. 9% (volume cap) LIHTC:
  - i. New Building – maximum developer fee of 15% of the total development costs (excluding developer fee) or \$3,750,000 (whichever is less).
  - ii. Existing Building (For both Existing Buildings used for housing and Existing Buildings not used for housing) – maximum developer fee of 10% of the acquisition costs and 15% of the rehabilitation costs (excluding developer fee) or \$3,750,000 (whichever is less).
- b. 4% (non-volume cap) LIHTC:
  - i. Maximum developer fee of 15% of the total development costs (excluding developer fee) **if the applicant waives its right to a qualified contract.**
  - ii. Maximum developer fee of 5% of the total development costs (excluding developer fee) or \$250,000 (whichever is less) **if the applicant does not waive its right to a qualified contract.**

**11. Minimum Affordability Period:**

- a. Applicants requesting an award of 4% LIHTC must commit to a minimum affordability period of 45 years.
- b. Acquisition/Rehabilitation of an Existing Building used for housing applicants: affordability period must also exceed any pre-existing affordability period by no less than 30 years.

**12. 4% LIHTC Developer Experience:**

- a. Minimum of one (1) LIHTC project Placed In Service by the Project Owner (General or Co-General Partner/Managing or Co-Managing Member).
- b. Minimum of one (1) LIHTC project currently managed by the Management Agent.

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

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

Applicants requesting LIHTC must submit all documentation required in the application and will be subject to all feasibility reviews as required for an application for LIHTC from the State's volume cap, with the exception of scoring under the Criteria Point System.



**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.	LIHTC Resource Efficiency – Use and Leverage.	0-9*
2.	County Income Adjuster	0-4*
3.	Overall project feasibility.	0-22*
4.	The ratio of developer fee as a percentage of total project cost.	0-7*
5.	Project will be receiving project-based rental assistance subsidies for the first time.	0-7*
6.	State/Local Government Support.	0-6*
7.	Energy Efficient and Green Building.	0-4*
8.	Project location and market demand.	0-6*
9.	Developer experience.	0-7*
10.	Project will provide low-income units for a longer period than is required under Section 42 IRC.	0-7*
11.	Project will give preference to tenant populations.	0-2*
12.	Project serving tenants with special housing needs.	0-2*
13.	Project will provide a greater percentage of low-income units than required under Section 42 IRC.	0-10*
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.	Projects offering tenants an opportunity for home ownership.	0 or 1*
16.	Project is located in qualified census tract, the development of which contributes to a concerted community revitalization plan as determined by HHFDC.	0 or 2*
17.	Historic Nature.	0 or 1*
18.	Waiver of Qualified Contract	20*

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

**Criterion 1**

LIHTC Resource Efficiency Use and Leverage

0 to 9 points

**1A – LIHTC Use**

The ratio is derived as: “Total Federal Tax LIHTC Requested (Annual)/Total Number of Proposed LIHTC Units”

Annual LIHTC / LIHTC Unit	Points
	Multiplier x Max Pts = Pts. Awarded
Ratio ≥ \$24,000	(0/9) x 5 = 0.00
\$24,000 > Ratio ≥ \$22,000	(1/9) x 5 = 0.56
\$22,000 > Ratio ≥ \$20,000	(2/9) x 5 = 1.11
\$20,000 > Ratio ≥ \$18,000	(3/9) x 5 = 1.67
\$18,000 > Ratio ≥ \$16,000	(4/9) x 5 = 2.22
\$16,000 > Ratio ≥ \$14,000	(5/9) x 5 = 2.78
\$14,000 > Ratio ≥ \$12,000	(6/9) x 5 = 3.33
\$12,000 > Ratio ≥ \$10,000	(7/9) x 5 = 3.89
Ratio < \$10,000	(9/9) x 5 = 5.00

**1B – LIHTC Leveraging**

The ratio is derived as “Total Federal Tax LIHTC requested (annual multiplied by ten years)/Total Project Cost”

Total LIHTC / Total Project Cost	Points
	Multiplier x Max Pts = Pts. Awarded
Ratio ≥ 80.00%	(0/6) x 4 = 0.00
80.00% > Ratio ≥ 70.00%	(1/6) x 4 = 0.67
70.00% > Ratio ≥ 60.00%	(2/6) x 4 = 1.33
60.00% > Ratio ≥ 50.00%	(3/6) x 4 = 2.00
50.00% > Ratio ≥ 40.00%	(4/6) x 4 = 2.67
Ratio < 40.00%	(6/6) x 4 = 4.00

**Criterion 2**

County Income Adjuster.

Applicants receive points under this criterion based on the MTSP income limits as determined by HUD for the county in which the project is located.

HHFDC shall use the 60%, 4 person income limit for determining point allocations between the counties as follows:

County based points are 0 to 4 rounded to the nearest hundredth (0.00) based on the lowest income limit. The county with the lowest limit receives 4 points while the county with the highest income limit receives 0 points. Points for the remaining counties are based on their proximity between the highest and lowest income limits. Please see example below based on the 2015 income limits.

		Honolulu County (Oahu)	Hawaii County	Kauai County	Maui County
2015 MTSP Income Limit		\$ 57,480	\$ 40,920	\$ 51,780	\$ 46,020
Lowest Income Limit	\$ 40,920.00				
Project's Difference from Lowest Ratio		16560	0	10860	5100
Range Between Lowest & Highest Ratio	\$ 16,560				
Maximum Points Available	\$ 4				
Range Value Per Point	\$ 4,140				
Project Points Available		4.00	4.00	4.00	4.00
Deduction Based On Difference from Lowest Ratio (Project's Difference / Range Value Per Point)		4.00	0.00	2.62	1.23
<b>Net Points Scored</b>		<b>0.00</b>	<b>4.00</b>	<b>1.38</b>	<b>2.77</b>

**Criterion 3.**

Overall Project Feasibility.

The points awarded will be based on HHFDC's evaluation of any and all factors that could impact overall project feasibility, including, but not limited to the following factors:

- Reasonableness of development costs ("RDC"). 0 to 9 points

Existing Building used for housing. Projects receive zero (0) points under RDC.

New Building projects and Existing Buildings not used for housing will be ranked and scored as follows:

A. 9% LIHTC Projects

1. Projects will receive 0 to 4.5 points (rounded to the nearest 0.00) based upon the lowest total development cost (without land) per gross building square foot, as follows:
  - a. The project with the lowest total development cost (without land) per gross building square foot will receive 4.5 points;
  - b. Other projects will receive a percentage of the 4.5 points based upon the subject project cost's percentage variation from the lowest cost, e.g., if the subject project cost is 15% higher than the project with the lowest cost, the subject project will receive 4.5 points less 15% of 4.5 points = 3.83 points;
  - c. By this formula, projects with a total cost that are twice or more times the lowest total cost will receive zero (0) points, e.g., if the subject project cost is 100% higher than the lowest cost, the subject project will receive 4.5 points less 100% of 4.5 points = 0 points.

2. Projects will receive 0 to 4.5 points (rounded to the nearest 0.00) based upon the lowest total development cost (with land) per unit, as follows:
    - a. The project with the lowest total development cost (with land) per unit will receive 4.5 points;
    - b. Other projects will receive a percentage of the 4.5 points based upon the subject project cost's percentage variation from the lowest cost, e.g., if the subject project cost is 20% higher than the project with the lowest cost, the subject project will receive 4.5 points less 20% of 4.5 points = 3.60 points;
    - c. By this formula, projects with a total cost that are twice or more times the lowest total cost will receive zero (0) points, e.g., if the subject project cost is 100% higher than the lowest cost, the subject project will receive 4.5 points less 100% of 4.5 points = 0 points.
- B. Total development costs (with, and without land, as applicable) of mixed-use projects with substantial non-residential use (including public and commercial uses) with its own non-HHFDC financing, may be evaluated without the non-residential component by proportionately reducing the total development costs based upon the gross floor area of the non-residential, and excluding the gross floor area of the non-residential use from the gross building area. For mixed income projects with a substantial number of units not being financed by LIHTC, the cost and area of these units may be discounted if the applicant can provide a clear and reasonable cost breakdown for the units not considered affordable under this program.
- Applicant's readiness to proceed with development of project. 0 to 10 points

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 such that the development of the Project will commence in a timely manner. (For example, lack of adequate financing sources; land use and zoning issues; or utility, water, and sewer availability.)

- A. Is the project schedule reasonable for the proposed development? Are there any unresolved development issues, e.g., are there restrictions on water or sewer availability? Are there any issues with the project budget, e.g., is the budget adequate? (2 points)
- B. Are there any discretionary approvals outstanding, e.g. 2 points will be awarded for meeting Chapter 343, HRS environmental requirements, 2 points for land use/zoning including Chapter 201H exemptions, and 2 points for other necessary discretionary approvals (6 points)

C. Are there any ministerial approvals outstanding, e.g., subdivision?  
 Have the construction drawings been completed and under review by the approving agencies? For existing projects, have all of the necessary studies been completed, e.g., hazardous waste assessments? (2 points)

- Tenant Services and Amenities. 0 to 3 points
  - Tenant services and amenities that will enhance the livability of the project

**Criterion 4.**

The applicant elects to limit the total Developer Fee as a percentage of the total development cost (excluding developer fee) as presented in the application. The Developer Fee includes total fees paid to the Developer, including, 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.

Developer Fee is subject to a maximum threshold cap. Please refer to Section III (B) (10) for details. Exceeding of this threshold cap results in immediate rejection of the application.

Applicants receive scores for this criterion based on the table below. Please note the different categories for New Building vs. Existing Building applications.

9% LIHTC Applicants:

New Building		Existing Building used for Housing				Existing Building <b>not</b> used for Housing			
		Acquisition Fee		Rehabilitation Fee		Acquisition Fee		Rehabilitation Fee	
Fee	Pts	Fee	Pts	Fee	Pts	Fee	Pts	Fee	Pts
15% > Fee ≥ 13%	0	10% > Fee ≥ 7%	0	15% > Fee ≥ 13%	0	10% > Fee ≥ 8%	0	15% > Fee ≥ 13%	0
13% > Fee ≥ 11%	1	7% > Fee ≥ 6%	1	13% > Fee ≥ 11%	1	8% > Fee ≥ 7%	1	13% > Fee ≥ 11%	1
11% > Fee ≥ 9%	2	Fee < 6%	3	11% > Fee ≥ 9%	2	Fee < 7%	3	11% > Fee ≥ 9%	2
9% > Fee ≥ 7%	3			9% > Fee ≥ 7%	3			Fee < 9%	4
7% > Fee ≥ 6%	5			Fee < 7%	4				
Fee < 6%	7								

**Criterion 5.**

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 7 points are awarded\*

\* If all the units in the project have project based subsidies then 7 points is awarded, if only a portion of a project has project based subsidies, then the scoring will be adjusted based upon the percentage of units subsidized. The percentage is derived as “Number of Subsidized Units / LIHTC and non-LIHTC subsidized units,” provided they are developed simultaneously.

**Criterion 6.**

State/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 lease from a government agency (including HHFDC).

The project has received a commitment for a permanent below market loan, or grant, or a commitment 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. 3 points

The project has received a commitment for a permanent below market loan, or grant, or a commitment 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. 6 points

The project has received a lease from a government agency (including HHFDC). Applicants will receive a percentage of the 3 points based upon the ratio of the square footage of the leased land to the total square footage of the project site. For example, if the square footage of the leased land is 50% of the total square footage of the project site, the applicant will receive 1.5 points. Up to 3 points

**The highest award possible is 6 points.**

**Criterion 7.**

Projects which promote smart growth, energy, and water conservation, operational savings and sustainable building practices in affordable housing design may be awarded up to 4 points as follows:

**Projects can score points in only one category. If an applicant attempts to elect more than one category, the project shall not receive any points in this criterion.**

Applicants must submit a certification from the architect confirming that the Project can meet the required building standards for the category selected below (refer to exhibit list of the Consolidated Application). For example, if an applicant selects LEED Gold, the architect must certify that the Project can meet the LEED Gold standard. **If the certification is missing or if the architect’s certification does not reconcile with the applicant’s election, the Project shall not receive any points in this criterion.**

EPA Energy Star v.3	Enterprise Green Communities	USGBC LEED for Homes – v4 HD&C	National Green Building Standard (NAHB)	No. Points
X	Certified	Certified	Bronze	1
		Silver	Silver	2
		Gold	Gold	3
		Platinum	Emerald	4

[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, certification from the appropriate regulating entity for the green building standard elected in the Project’s consolidated application and scored upon by HHFDC. Alternatively, if the Project has followed through with green building design and construction but has not been certified or commissioned by a third party, submit a certification from the Project architect confirming that the Project has met the standard selected. Failure to provide the certification may result in forfeiture of the good faith deposit.

**Criterion 8.**

Project location and market demand.

0 to 6 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 and is accessible to employment opportunities and shopping; and recreational, medical and educational facilities are located in the immediate vicinity of the project site.

Located in a County's urban core	4 points
Located in an urbanized area	3 points
Located in a master planned community	2 points
Located in a rural district in proximity to employment opportunities and medical and educational facilities	1 point
Project may earn two additional points for availability of a mass transit station/stop within ½ mile. For Oahu, the term "mass transit" is exclusive to rail. For the neighbor islands, the term "mass transit" is not exclusive to rail.	2 points

**Criterion 9.**

Developer and Property Management Experience.

0 to 7 points

Applicants receive scores for this criterion based on the following:

1. Number of LIHTC Placed In Service by the Project Owner (General Partner/Managing Member/Developer);

Projects Placed in Service	Points
None	0
1 – 5	1
6+	2

2. Number of LIHTC Placed In Service in Hawaii by the Project Owner (General Partner/Managing Member/Developer);

Projects Placed in Service	Points
None	0
1 – 3	1
4+	2

3. Number of LIHTC projects managed by the Management Agent;

Projects Managed	Points
None	0
1 – 5	1
6+	2

4. Number of LIHTC project located in the State of Hawaii managed by the management Agent;

Projects Managed	Points
None	0
1+	1



**Criterion 10.**

Applicants electing to commit to an additional use period beyond the initial 15-year LIHTC compliance period (collectively the Extended Use Period) will be awarded points based on the table below. The election 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	7 points
55 to 60 years	4 points
50 to 54 years	3 points
45 to 49 years	2 points
40 to 44 years	1 point
Less than 40 years	0 points

**Criterion 11.**

An Applicant will receive up to 2 points if it elects to provide affordable housing that provide larger units which are available to individuals with children or large families.

Projects providing units that are 2-bedrooms or larger for at least 20% of all low-income units may earn 1 to 2 points according to the following schedule:

20% to 39% of the total units	1 point
40% or more of the total units	2 points

**Criterion 12.**

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 persons with physical or mental disabilities or persons who are homeless.

Projects may receive up to 2 points for the criterion 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 2 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.

**Market Study must include an analysis of market demand for tenants with special housing needs.**

**Projects that commit to provide housing for tenants populations with special housing needs will be required to have those units occupied by the special housing needs tenants. The Declaration of Restrictive Covenants for Low Income Housing Credits will restrict the occupancy of the units to the special housing needs tenants for the duration of the committed affordability period. For example, if a projects commits 10 of the 60 LIHTC units for special housing needs tenants, those units shall be occupied at all times by a special housing needs tenant. The unit shall remain vacant until a special housing needs tenant occupies the unit regardless of whether there is a waitlist for the project for the other remaining units.**

**Criterion 13.**

Applicants receive points by providing a preference to lower income tenants in accordance with the table below. Projects may score multiple times under the “Percent of Income Targeted Units” category (i.e. electing 80% of LIHTC units at 50% AMGI and 20% of LIHTC units at 30% AMGI for 10 points). However, projects may only score once under a specific “Area Median Income” category (i.e. if 70% of LIHTC units at 50% AMGI is elected, the project cannot elect 30% of LIHTC at 50% AMGI to account for 100% of LIHTC units). The highest award possible is 10 points.

Version C-4		Percent of Area Median Income			
		60%	50%	40%	30%
Percent of Income Targeted Units to Total LIHTC Units	80%	6.25	7.75	9	10
	70%	5.25	6.75	8	9
	60%	4.25	5.75	7	8
	50%	3.25	4.75	6	7
	40%	2.25	3.75	5	6
	30%	1.25	2.75	4	5
	20%	0.25	1.75	3	4
	10%	0	0.75	2	3

Please see example scoring under this criterion below:

Project		60% AMI	50% AMI	40% AMI	30% AMI	Points
Alpha	Percent of Income Targeted Units to Total LIHTC Units	100%				6.25
Bravo			100%			7.75
Charlie		50%	50%			8.00
Delta		50%		50%		9.25
Echo		50%	30%	10%	10%	10.00
Foxtrot		80%	20%			8.00
Golf		80%	10%		10%	10.00

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

**Criterion 14.**

Project involves a Qualified Non-Profit Organization as defined in Section 42 IRC. The Qualified Non-Profit Organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of Section 469(h) IRC) in the development and operation of the project throughout the Extended Use Period.

In addition, HHFDC requires the following for the project to score points in Criterion 14:

1. Submission of the Articles of Incorporation of the Qualified Non-Profit Organization
2. Copy of a current 501(c)(3) IRS Tax Exemption Letter for the Qualified Non-Profit Organization
3. Most recent Treasury Form 990 with all supporting documentation, as filed with the IRS
4. The Qualified Non-Profit Organization is required to have a physical office in the State of Hawaii
5. Submission of a valid Certificate of Vendor Compliance for the Qualified Non-Profit Organization indicating the entity is “compliant” or “exempt”.
6. One of the exempt purposes of the Qualified Non-Profit Organization includes fostering low-income housing as indicated by Section 42 IRC.

**9% LIHTC Applicants**

The project will elect to receive an allocation from the non-profit set-aside. The owner must comply with the requirement of the non-profit set-aside during the extended use period. There is a Qualified Non-Profit Organization that will have an interest in and material participation in the project throughout the extended use period

3 points

**Criterion 15.**

Project is 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 criterion, 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

**Criterion 16.**

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 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.

**Criterion 17.**

Historic Nature. The 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

**Criterion 18.**

Waiver of Qualified Contract 20 points

Applicants that elect to waive the right to exercise a request for a qualified contract pursuant to Section 42(h)(6)(E)(i)(II) of the IRC will be awarded 20 points.

**IV. Rights of the HHFDC**

**The HHFDC reserves the right to disapprove any application or project for any LIHTC reservation or allocation, regardless of ranking under the criteria and point system as contained in section III of this 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 forward commitment for up to 25% of the next year's housing credit ceiling.**

**The HHFDC is required under Section 42 of the IRC to allocate only the minimum amount of LIHTC required to make a project feasible. The determination of the amount of LIHTC 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 LIHTC allocated to a project based on the actual cost and financing of the project.**

**Compliance with Commitments and Representations:**

1. Projects and Applicants receiving an award of LIHTC are required to comply with their commitments and representations made under the (i) Consolidated Application and (ii) Qualified Allocation Plan.
2. HHFDC shall verify compliance of the Project and Applicant during its review of the Form 8609 request. The review shall include, but is not limited to, the following:
  - a. Compliance with Contractor Profit and Developer Fee Limitations determined via the audited cost certification.
  - b. Completion of project improvements in accordance with plans and specifications determined via architect certification.
  - c. Compliance with Green Building and Energy Efficiency commitments determined via architect certification or certificate issuance by the appropriate regulating body.
  - d. Please refer to the request of IRS Form 8609 Issuance for additional information.
3. The failure of the Project and Applicant to meet the commitments and representations shall result in the following:
  - a. Forfeiture of the entire 10% Good Faith Deposit collected during acceptance of the LIHTC Carryover Allocation or Reservation.

**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 LIHTC 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 to the HHFDC 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 LIHTC reservation 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 LIHTC. 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 LIHTC 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 LIHTC 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 LIHTC units substantiates the maintenance, increase or reduction of each BIN's qualified basis.

### **C. Qualifying Households**

Applicants for low-income units should be advised early in their initial visit to the project that there are maximum income limits 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. Self-certification of annual income is required for subsequent years.

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. IRS hold harmless policy may apply.

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 LIHTC.

The owner shall have a period of forty-five (45) 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 3560-8, 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 3560-8 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 LIHTC 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 forty-five (45) 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 LIHTC 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 LIHTC 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 forty-five (45) 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. Section 42(h)(6) provides 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.

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<sup>2</sup> IRC Section 42 (h)(6)(E)(i)(II)

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 LIHTC;
2. the LIHTC 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 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.

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

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 any time 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.

## **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.