

**SUMMARY OF THE LOW INCOME HOUSING TAX CREDIT  
PROVISIONS CONTAINED IN SECTION 42  
OF THE INTERNAL REVENUE CODE**

The low income housing tax credit is available under Section 42 of the Internal Revenue Code of 1986. The credit is a federal income tax credit for owners of qualifying rental housing which meets certain low income occupancy and rent limitation requirements.

Except for certain buildings substantially financed with tax-exempt bonds, an owner must first obtain a credit allocation from the appropriate state agency before claiming the tax credit. ~~The 2002 per state resident amount of tax credit allocated annually for housing was limited to \$1.75 (with an inflation adjustment anticipated in 2003)The amount of tax credit which may be allocated annually for housing within each state is limited to \$1.25 per state resident,~~ with a minimum cap of \$2,000,000. Montana receives the minimum cap because of our population. The Montana Board of Housing (MBOH) is the state agency which allocates the tax credit for housing located in Montana.

The following is a brief summary of some elements of the low income housing tax credit and is provided for informational purposes only. There are numerous technical rules governing a building's qualification for the tax credit, the amount of the tax credit, and an owner's ability to use the credit to offset federal income taxes. THE MBOH DOES NOT AND WILL NOT MAKE ANY REPRESENTATION CONCERNING THE APPLICABILITY OF THE TAX CREDIT TO A PARTICULAR BUILDING OR OWNER. DEVELOPERS OR OWNERS INTERESTED IN APPLYING FOR A CREDIT ALLOCATION SHOULD CONSULT THEIR OWN TAX ACCOUNTANT OR ATTORNEY IN PLANNING A SPECIFIC TRANSACTION.

**A. Eligible Types of Buildings and Rental Units**

The tax credit is available for residential rental buildings which are part of a qualifying low income project. The rental units must be available to the general public. Residential properties which are ineligible for the credit generally include transient housing, ~~(housing initially leased for less than six (6) months),~~ buildings of four (4) units or less which are occupied by the owner or a relative of the owner, nursing homes, life care facilities, retirement homes providing significant services other than housing, dormitories, and trailer parks.

**B. Credit Amounts**

The tax credit can be used in conjunction with the acquisition and substantial rehabilitation, substantial rehabilitation or construction of qualifying residential rental housing. Depending upon the type of building and its financing, the annual tax credit for buildings is approximately nine ~~(9)~~ percent or approximately four ~~(4)~~ percent, and is based on either a present value of 70% or 30% of the qualified basis of the building. As long as the building continues to qualify for the credit, the owner may claim the credit each year during the 10-year credit period. Except for certain buildings substantially financed with tax-exempt bonds, the credit is limited to the amount of credit allocated to the building by the appropriate state agency.

~~1)~~ **New Construction or Substantial Rehabilitation.** For a new building placed in service which is not federally subsidized, the annual tax credit is approximately nine (9) percent

of the building's qualified basis. The annual credit percentage for new buildings placed in service which are not federally subsidized will be set in such a manner that the credit's present value over the 10-year credit period will equal 70 percent of the building's qualified basis. If an owner substantially rehabilitates a building (basically by incurring rehabilitation expenditures the greater of either \$3,000 per rental unit or an amount which is not less than 10% of the adjusted basis of the building during a 24-month or shorter period), the rehabilitation expenditures are treated as a separate new building for purposes of the tax credit.

**2) Federally Subsidized Buildings.**

For new buildings receiving a federal subsidy, the annual tax credit is approximately four (4) percent of qualified basis. The annual credit for federally subsidized new buildings placed in service will be set in such a manner that the credit's present value over the 10-year credit period will equal 30 percent of qualified basis. These credit percentages also apply to federally subsidized, substantial rehabilitations treated as new buildings.

A federal subsidy is a loan of federal funds provided directly by a federal agency or indirectly by a local or state governmental entity where the interest rate on the loan is less than the applicable federal rate (which is based on prevailing interest rates on federal obligations). Financing provided by state or local governments, the interest on which is exempt from federal income tax under Section 103 of the Internal Revenue Code, is also considered a federal subsidy. A Farmers Home Administration Section 515 loan is an example of a federal subsidy. Section 8 rental "certificate" or "voucher" subsidy is not considered to be a federal subsidy.

**3) Acquisition and Substantial Rehabilitation.** For an existing building which is acquired and substantially rehabilitated, the tax credit will be approximately four (4) percent for qualified acquisition costs and approximately nine (9) percent for the qualified substantial rehabilitation costs, provided that the rehabilitation is not federally subsidized. For such buildings, credit will be at a level providing a present value of 30 percent or 70 percent, respectively.

**C. Project Requirements**

**1) Qualifying Buildings.** In order to qualify for the tax credit, an eligible building must be part of a qualifying low income project.

**2) Targeting.** A project is a qualifying low income project only if it meets one of the following two requirements:

**1. (i) At least 20% of its units are rent-restricted\_ and rented to households with income at 50% or less of area median gross income, adjusted for family size (the "20-50 test") (Maximum rent is calculated at 30% of 50% Area Median Income);** or

**2. (ii) At least 40% of its units are rent-restricted\_ and rented to households with income at 60% or less of area median income, adjusted for family size (the "40-60 test") (Maximum rent is calculated 30% of 60% Area Median Income).**

The owner must make an irrevocable election between the 20-50 test and the 40-60 test. Regardless of the election made, the credit is only allowed for the portion of the building

dedicated to low income use (for example, if the owner elects the 40/60 test and only 40% of the units are low income, the owner would qualify for tax credits on 40% of the eligible basis as defined in this summary).

~~3)~~ Rent Limitation. Gross rent for each low income unit may not exceed 30% of the applicable income ceiling (30% of 50% of median or 60% of median, as applicable, calculated based on the number of bedrooms in the unit). Gross rent includes the rent paid by the tenant, including utility costs, but excludes Section 8 or other federal rent subsidies. If the tenant pays utilities directly, the maximum rent must be reduced by a utility allowance.

#### ~~D.~~ Compliance Period

Owners must continue to meet the credit requirements for a 15-year period, ~~—~~ five years beyond the 10-year credit period. Failure to comply, ~~or reduction in the~~ reducing the number ~~of floor space~~ of the low income units or reducing floor space for ~~on~~ which the credit is based during the 15-year compliance period, ~~will result in a recapture, with-including~~ non-deductible interest, of at least a portion of the credits ~~s~~ taken previously by the owner.

To be eligible for Section 42 credits, a building must be subject to an extended low income housing commitment between the owner and the state agency, executing a 30 year extended use agreement with an option to sell the project at year fifteen (15). The owner must meet compliance criteria for the full extended use agreement.

#### ~~E.~~ Qualified Basis

~~1)~~ Credit Calculations. To calculate the credit each year, the taxpayer applies the applicable credit percentage to the qualified basis of a qualifying building. The "qualified basis" is that portion of the "eligible basis" attributable to low income units in the building.

~~2)~~ Eligible Basis. Eligible basis of a qualifying building is generally the same as its adjusted basis for tax purposes, determined at the time the building is placed in service. Generally, eligible basis consists of:

~~1. (i) the~~ The cost of new construction or substantial rehabilitation; or

~~2. (ii) the~~ The cost of purchasing an existing building and the cost of substantial rehabilitation.

Eligible basis includes costs of common areas and comparable amenities provided to all residential rental units in the building. However, eligible basis must be reduced to reflect any rehabilitation or historic preservation credit claimed with respect to the building. ~~Also, e~~ Eligible basis excludes land cost, costs attributable to any portion of the building which is not residential rental property (except common areas), and costs attributable to non-low income units which are above the average quality of the low income units in the project.

~~3)~~ Qualified Basis. To determine the qualified basis of a qualifying building, the taxpayer multiplies the eligible basis of the building by the lesser of the "unit percentage" or the "floor space percentage". The "unit percentage" is the number of low income units in the building expressed as a percentage of the number of all residential rental units in the building.

The "floor space percentage" is the total floor space of the low units in the building expressed as a percentage of the total floor space of all residential rental units in the building. Low income units are eligible units which are occupied by low income tenants (with income at or below 50% or 60% of area median gross income, depending on the owner's election of the 20-50 or 40-60 test) and which comply with the gross rent limitation (30% of the applicable 50% or 60% income limit). The credit is only allowed for the portion of the building dedicated to low income use.

#### **F. Limits on Utilizing the Tax Credit**

A building qualifying for the tax credit can be syndicated. Individual investors in the building are subject to the passive loss, passive credit, and at-risk rules in the Internal Revenue Code. Certain for-profit corporations not subject to the passive credit and at-risk rules may be able to use the project's tax credit more easily than individual investors. The low income housing credit is a part of the general business credit and therefore is also subject to the limits on such credit.

#### **G. Allocation of Credit**

**1) Need for Allocation.** Except for certain projects substantially financed with tax-exempt bonds, an owner must first obtain a credit allocation from the MBOH before claiming the tax credit. The MBOH is the state agency which allocates the tax credit for housing located in Montana. Where tax-exempt bond financing is used to finance a project, the issuer of bonds must determine the amount of allocation using the same criteria as the MBOH's Qualified Allocation Plan. The MBOH makes an allocation on IRS Form 8609.

**2) Allocation Applies Throughout Credit Period.** An owner needs to obtain a credit allocation only once with respect to a building for which the credit will be claimed. The credit allocation then applies each year during the 10-year credit period. Regardless of the maximum credit otherwise available (based on applying the applicable credit percentage to the qualified basis), the credit claimed each year for a building may not exceed the credit allocation for that building.

**3) Time for Obtaining Allocation.** The owner must obtain a credit allocation for a building by the close of the calendar year in which the building is placed in service.

**OR**

**4) Carryover Provision.** A carryover of tax credit allocation for a period of two (2) years may be permitted if the owner/developer can certify that more than ten percent (10%) of the project's costs have been expended prior to the end of the calendar year in which the allocation is made and the taxpayer has title to the property.

**5) Ten Percent for Non-profits.** Ten percent of each state's credit allocation must be set aside for buildings which are part of projects involving "qualified nonprofit organizations". To qualify as such, an organization must be exempt from federal income tax under Section 501(c)(3) or (4) of the Internal Revenue Code and must have as one of its exempt purposes, the fostering of low income housing, must own an interest in the project, and must materially participate in the development and operation of the project throughout the compliance period. Such nonprofit organizations may not be affiliated with or controlled by a for-profit organization.

## ADMINISTRATIVE PROCESS, ELIGIBLE COMPETITIONS, AND FEE SCHEDULE

### Administrative Process

1.     —Read this packet of material.
2.     —Determine the degree that your building(s) and development correspond to the MBOH's Development Selection Criteria, contained in the enclosed Allocation Plan.
3.     —Consult your tax attorney or accountant concerning: (a) each building's eligibility for the tax credit; (b) the amount of the credit, if any, for which your building(s) may be eligible; and (c) your and/or your investor's ability to use the tax credit.
4.     —Send the application for Reservation of Low Income Housing Tax Credit, and the applicable fee (based on the fee schedule below) to the MBOH. A separate application is required for each project. A single application should be made for all buildings within a single project.
5.     —Applications received by the submission ~~date-deadline~~ of the application cycle will first be reviewed for completeness and soundness of the development. Applications must have evidence of site control, documentation of proper zoning, and a sketch plan of the site. The application must include a preliminary financing letter from a lender indicating the proposed terms and conditions of the loan. The financing letter must be a formal expression of interest in financing the project, sufficient to support the terms and conditions represented in the application. Applications must also demonstrate that they are financially sound. This would include reasonable financing terms, costs, expenses, and sufficient cash flow to support the operations of the project. This ~~would also include~~ documentation (market study) that a market exists to support the project and that the project meets the needs of the community. Incomplete applications will be returned for potential submission in the next round. The remaining applications will be reviewed and ranked according to the allocation plan, and its selection criteria. Applications not meeting the minimum criteria will be denied. Eligible developments selected and prioritized are evaluated for the amount of credit allocation needed for feasibility and long-term viability.

The ~~Board of Directors~~Board ~~will then~~ determines whether to make a tax credit reservation for your development. Once ~~an application has been approved by the~~ Board of DirectorsBoard approves an application for future reservation of tax credits, the ~~applicant~~ applicant will have 90 days in which to provide evidence the project is progressing (i.e., purchase of land, conditional financing commitment). If the applicant can not show significant evidence toward meeting the reservation requirements (detailed in #6), the ~~Board of Directors~~Board may withdraw conditional approval of the application.

6.     —If the ~~MBOH Board of Directors~~Board approves your application for a reservation of credit, it will request the following from ~~you~~the partnership, prior to entering into a Reservation Agreement.
  - Demonstrated financial ability to proceed (conditional financing commitment)
  - Completed purchase of site

- Final zoning approval
- Multi-year revenue and expense pro forma schedule
- Certain other updated application material

Upon receipt of the above, the MBOH will mail a Reservation Agreement to ~~you~~the partnership. ~~You~~The partnership should review, sign, and return this Agreement with the balance of the reservation fee (based on the fee schedule below). Upon receipt, the MBOH will sign the Agreement, and return a copy to ~~you~~the partnership.

7. ~~—~~Once the ~~MBOH and you~~ partnership enters into a Reservation Agreement with the MBOH, ~~you~~ the partnership must then meet the conditions described in the Reservation Agreement, and provide the required documentation before ~~you~~ they will receive an allocation of tax credit. Once an allocation, or carry forward allocation is made, the MBOH will send ~~you~~ the partnership a certificate of allocation.
8. ~~—~~If a Carryover Allocation of tax credits is requested, prior to issuance of the Carryover, the MBOH will require a firm commitment from a lender outlining the terms and conditions of financing, or a letter evidencing acceptance of an approved loan by the lender.

### ELIGIBLE COMPETITIONS

Applications must be to the MBOH's office by 5:00 pm Mountain Time on the application submission date.

<u>Submission</u>	<u>Application Presented to Board</u>
February <del>17</del> , <del>2002</del> <u>2003</u>	<del>—</del> <u>March or</u> April Board Meeting
April <del>26</del> <u>18</u> , <del>2002</del> <u>2003</u>	<del>—</del> June Board Meeting

Applications must be complete when submitted to the MBOH. Minor corrections to applications may be allowed, ~~but a~~ applications requiring substantial revision or which are substantially incomplete will be deferred to the next application round. Developments ~~will~~ need to meet the 10% carry forward requirements, ~~which includes~~ including an accountant's cost certification, filed restricted covenants and other documents, by November ~~15~~14, ~~2002~~2003.

### FEE SCHEDULE (SUBJECT TO CHANGE)

1. ~~—~~The total reservation fee, including the application fee, ~~is totals~~ 4.5% of the amount of the credit actually reserved. ~~An~~ The application fee equals ~~to~~ 1.5% of the amount of credit reservation requested in your application, ~~is~~ payable with your application. ~~An application will not be considered received by the MBOH unless the MBOH receives the application fee~~ The MBOH will not consider applications submitted without an application fee.
2. ~~—~~The balance of the total reservation fee (~~remaining after payment of~~ less the application fee) is due at the time ~~you~~ the partnership enters a Reservation Agreement with the MBOH. Once ~~you~~ the partnership enters a Reservation Agreement and pays the total reservation fee, the fee is non-refundable. If ~~you~~ the partnership fails to meet the conditions described in the Reservation Agreement, and therefore, ~~does~~ not receive a credit allocation, the reservation fee will be forfeited to the MBOH. MBOH will nevertheless retain your total reservation fee.

3.——Developments will ~~be charged~~incur a reasonable compliance monitoring fee, to offset the costs ~~incurred by the~~ MBOH ~~for required~~ compliance monitoring. The compliance monitoring fee ~~will be of~~ \$20.00 per low income unit (subject to change), is payable at the time of the Owner's Submission of the ~~Annual Certificate of Program Compliance~~Owner's Certificate of Continuing Program Compliance. The MBOH is considering an increase of \$10 beginning in the year 2004.

**QUALIFIED ALLOCATION PLAN**  
**FOR THE LOW INCOME HOUSING TAX CREDIT**  
**20022003**

**Introduction**

~~The Montana Board of Housing (MBOH) is the administrative agency of the Low Income Housing Tax Credit program in the State of Montana. The Low Income Housing Tax Credit was established by Congress in the Tax Reform Act of 1986, and is intended to provide for the retention, rehabilitation and construction of rental housing for low income individuals and families. The MBOH implemented its program in 1987, and since then has assisted in the provision of 3,656 low income rental units in Montana. Congress established the Low Income Tax Credit program with the Tax Reform Act of 1986. The Montana Board of Housing (MBOH) implemented and began administering its Low Income Housing Tax Credit program in 1987 in the State of Montana. Since then, it has assisted in providing for the retention, rehabilitation, and construction of rental housing for low income individuals and families for over 3,976 units throughout Montana.~~

The Omnibus Budget Reconciliation Act of 1989 ~~requires~~ required the appropriate administering agencies (in this case, the MBOH) to develop a Qualified Allocation Plan (QAP) defining the process ~~by which it will~~ to distribute ~~the~~ Low Income Housing Tax Credits to low income rental housing developments in Montana. The Omnibus Budget Reconciliation Act of 1993 provided a permanent extension for the Low Income Housing Tax Credit.

This allocation plan is intended to ensure the selection of those developments which address the most pressing housing needs of the state, in accordance with the guidelines and requirements established by the federal government.

The final Qualified Allocation Plan for administration and distribution of the Low Income Housing Tax Credit was reviewed by the MBOH ~~Board of Directors~~ Board on September ~~2010,~~ 20042002, was distributed for public comment and subjected to public hearing on October ~~1011,~~ 2004-2002, ~~and then~~ approved by the MBOH Board on October 18, ~~20042002.~~ The final plan was approved by the Governor of Montana Judy Martz, on November ~~6~~ 20042002.

For ~~2002-2003~~ the MBOH ~~will~~ makes available its authorized volume cap of \$2,000,000 of credit authority. ~~Those developments selected will be evaluated to determine the amount of credit allocated to them, as the federal legislation requires that the administering agency allocate only the amount of credit it determines necessary to the financial feasibility of the development. The MBOH evaluates, decides, and allocates credits to the selected developments. Federal legislation requires that the administering agency allocate only the amount of credit it determines necessary to the financial feasibility of the development.~~

**Application Process**

The MBOH ~~makes an allocation of~~ allocates tax credits on IRS Form 8609 when a qualified building is placed in service (available for occupancy). In order to facilitate planning by

owners and developers of potential tax credit developments, MBOH provides credits ~~will be available~~ through a two-step process (reservation and allocation).

Applicants ~~for reservation~~ may apply ~~to receive a for~~ reservation of tax credits for a particular development during the following Eligible Competition periods.

### Eligible Competitions

Applications must be **to the MBOH's office by 5:00 pm Mountain ~~Standard~~ Time on the application submission date.**

<u>Submission</u>	<u>Application Presented to Board</u>
February <del>17, 2002</del> <u>2003</u>	<del>March or</del> April Board Meeting
April <del>26</del> <u>18, 2002<u>2003</u></u>	June Board Meeting

~~Submit Applications must be complete when submitted applications~~ to the MBOH. ~~MBOH may allow Minor minor~~ corrections to applications ~~may be allowed~~, but will return applications requiring substantial revision or ~~which those that~~ are substantially incomplete, will be deferred to the next application round.

Between the submission deadline and the ~~Board of Directors~~Board meeting, as required by federal law, MBOH ~~will notify~~notifies the chief executive officer of the local jurisdiction of each proposed development to ~~provide opportunity for solicit~~ comments on the development. ~~In addition, t~~he MBOH ~~will notify~~notifies community housing providers, ~~and~~ low income housing advocates, and local community legislators, soliciting comments on the proposed development.

If all of the authorized credits are reserved after a particular cycle, MBOH may place additional applications ~~will be placed on a waiting list on a~~ prioritized waiting list, based on Development Selection Criteria ranking, for review in the event credits become available at a later date.

~~Applications received by the submission date of the application cycle will first be reviewed~~MBOH reviews applications received by the submission date for completeness and soundness of the development. Tax credit recipients must demonstrate effective compliance as prescribed by the projects restrictive covenants during the initial rent-up. This must be considered prior to consideration for subsequent tax credit projects. The staff reviews applications that have another tax credit project currently being completed to determine if the applicant has sufficient ~~Applicants with a project currently being completed, that have already been allocated tax credits, will be reviewed to determine if the applicant has the~~ resources to complete two or more projects at one time. In this review, criteria~~Criterion which that~~ may be used, includes but is not limited to, in this review, is the percentage of completeness of current project(s) and/or past project work performance. If staff or the Board determines that a new project does not seem to be viable or reasonable, together with an existing project, the new application may be turned down without scoring.

Applicants with current project(s) that have outstanding substantial IRS Form 8823's may be turned down without the application being scored.

~~Applications Applicants~~ must ~~have provide~~ evidence of site ownership (or a valid option on the property) control, documentation of proper zoning, and a sketch plan of the site. This should include architect site drawings and floor plans for the project.

~~The application must include a A~~ preliminary financing letter from a lender indicating the proposed terms and conditions of the loan must be included. The financing letter must ~~be a~~ formally ~~expression of~~ interest in financing the project, ~~in~~ sufficiency to support the terms and conditions represented in the project financing section of the application. Applications must ~~also~~ demonstrate ~~that they are financially sound~~ financial soundness. This would include reasonable financing terms, costs, expenses, and sufficient cash flow to support the operations of the project. The application must include:

- Project/unit amenities
- Profit or non-profit status
- Total years of commitment to project
- Selection of target audience (20-50)(40-60)
- If targeted for ownership, number of years
- Letters of community support
- Proof of ownership of commitment to purchase

~~This would also include documentation (~~The application must include a market ~~study)study documenting~~ that a market exists to support the project and that the project meets the needs of the community. The market study must clearly identify the following on a summary sheet:

- Average (comparable) market unit rents in immediate area
- Vacancy rate
- Capture rate
- Absorption rate
- Units needed in market area
- Verification that analysis was conducted at “arms length”
- Signed and notarized with date

~~If~~ if a project proposes a property tax exemption, ~~documentation of the public hearing~~ must be submitted with the application. Without documentation, ~~or~~ the project will be underwritten as if no exemption ~~will be was~~ received.

MBOH will return ~~in~~ incomplete or unsound applications, ~~will be returned for potential submission in the next round.~~ These applications may be resubmitted for consideration during the next round once completed or fully justified. An application submitted by an entity with a poor demonstrated track record of quality experience in completed development or management of low income housing, whether located in Montana or other states, will also be returned. The remaining applications will be reviewed and ranked according to the allocation plan, and its selection criteria. Applications not meeting the minimum criteria will be denied.

Application Threshold Criteria – What is considered by the MBOH staff in the application packet to meet the threshold for scoring:

- Completeness
- Application fee
- Received by the deadline date
- Proof of ability to successfully conduct compliance
- Proof of ability or capacity to construct two LIHTC projects simultaneously
- Cash flow analysis
- Market analysis

As part of its review of applications, the MBOH ~~will~~contacts community officials of the project location to discuss relevant selection criteria information pertaining to the application and the proposed project. The MBOH may also confirm specific information in the application or seek clarification regarding information represented in the application. This will include checking developer team references and all other sources as appropriate (i.e. credit reports and direct contact with the project developer). Failure to respond to a written MBOH request by the applicant within 10 working days may result in reductions in application scoring results points.

Eligible developments selected and prioritized in the application cycle will be evaluated for the amount of allocation needed for feasibility and long term viability. Three underwriting evaluations will be conducted prior to awarding credit (a.) at application, b.) when a reservation or binding commitment is made, and c.) prior to issuance of Form 8609). Tax credits will be limited to the amount that the MBOH, in its sole discretion, deems necessary to make the development feasible. However, the evaluation is not a warranty that the owner or developer should undertake the development, or that no risk is involved for the investor.

### Set asides

The total amount of tax credit available to Montana for ~~2002-2003~~ is \$2,000,000 plus ~~any~~ unused credits, if any, from earlier allocations which may be carried forward.

**1.**—— Ten percent [10%] of the credit available (\$200,000) is required to be set aside for the entire year, for projects involving qualified non-profit organizations. A qualified non-profit must: a.) be a 501(c)(3) or 501(c)(4) organization which has as an exempt purpose of fostering low income housing; b.) own an interest in the project; and c.) materially participate in the development and operation of the project throughout the compliance period. Such non-profit organizations may not be affiliated with or controlled by a for-profit organization. This is a requirement of federal law.

**2.**—— Twenty percent [20%] (\$400,000) of the credit amount is reserved for developments receiving \$100,000 or less in credits. If eligible applications are not received to use the set aside within the April 26 February 17, 2002-2003 round, the credits will be available for general allocation. If, within the first round, there exist a large project application that was not fully funded with tax credits, but scored well enough to be considered, it may be funded by the board during the first round. This may be accomplished when applications for small projects have been fully funded and the board deems that remaining funds should be applied toward the partially funded large project.

**3.**—— Twenty-five percent [25%] of the total annual credit amount (\$500,000) will be the maximum credit allocated to any one development or developer.

MBOH reserves the right to determine in which set aside a project will compete (subject to eligibility therefore), regardless of eligibility for any other set aside outlined above. If a project is submitted that has the appearance of one project but is submitted as more than one in order to utilize the small project set aside, this will not be allowed and the project will be placed in the proper category as determined by Board staff.

## DEVELOPMENT SELECTION CRITERIA

~~Once MBOH has reviewed all applications received in the application cycle for completeness, soundness, and eligibility based on federal requirements, applications will be submitted for Board of Directors consideration according to the below listed selection criteria, and the resultant ranking of each application. Only those applications meeting the minimum threshold of points will be presented to the Board of Directors. The MBOH staff reviews all applications received in the application cycle for completeness, soundness, and eligibility based on federal requirements. The MBOH staff provides to the Board only those applications meeting the minimum threshold (as established below). The Board considers the applications according to the Development Selection Criteria and their resultant ranking and subsequently approves or disapproves the tax credit applications.~~

**Each application must include a narrative addressing the twelve development criteria and how the application meets each criteria/criterion, the market study as well as all other documentation requested in the application.**

1. —Extended Low Income Use\* (0-10 points): Federal law ~~now~~ requires a 30-year extended use agreement with an option to sell the project at year 15. ~~Special preference will be given to a~~ development which maintains units for low income occupancy beyond the fifteen year minimum compliance period receives special preference. ~~A proposal will receive points based on the number of years of extended use beyond the compliance period. Developments will be bound by the terms committed to in the application process through the use of a Land Use Restriction Agreement receive points listed herein for extended beyond the initial compliance period.~~

15 years - 0 points  
20 years - 4 points  
25 years - 6 points  
30 years - 8 points  
over 30 years - 10 points

2. —Serves Lowest Income Tenants\* (0-20 points): Federal law requires that to be eligible for tax credits, developments must choose as a threshold, either a minimum occupancy of 20% of total units by tenants at 50% of area median income, or a minimum of 40% of total units affordable at 60% of area median income. A proposal ~~will receive~~ s special preference, and ~~the following~~ points indicated below, for the percentage of eligible units at the following area median income levels. A development ~~may receive~~ s points in both the 50% category and the 60% category, if the development targets both income levels. **Developments will be bound by the terms committed to in the application process through the use of a Land Use Restriction Agreement.**

<u>Area Median Income Level</u>	<u>Percentage of Eligible Units</u>	<u>Points</u>
50% or below	15-20%	6
50% or below	21-40%	10
50% or below	41-60%	15
50% or below	61-100%	20
60% or below	40%	0
60% or below	41-60%	2
60% or below	61-100%	4

3. Project Location (7 points):

- a. Developments located in a community identified as distressed or hard-to-develop areas. Please note this is not the same as IRS or HUD identified areas (2 points).
- b. Developments located in an area with a high percentage of substandard units- (2 points).
- c. Developments located in a given area in regard to services to tenant. (schools, medical services, shopping, transportation) (3 points).

4. Housing Needs Considerations (4 points):

- a. Meets area housing needs and priorities as evidenced by area housing providers. (2 points).
- b. Addresses area market concerns, such as vacancy rate and type of housing- (2 points).

5. Project Characteristics (18 points):

- a. Proposes the preservation of existing federally assisted housing stock or increases the affordable housing stock through the use of either the Rural Development 515 program, HOME program, the Community Development Block Grant program or the FHLB Affordable Housing Program (AHP) (-) (2 points).
- b. Appropriateness for area housing market. (rehab. vs. new construction, or addressing vacant buildings) (4 points).
- c. Appropriateness of size of development for community- (3 points).
- d. Development targets projects intended for eventual low-income tenant ownership. (1 point).
- e. Developments that include higher efficiency, quality and amenities provided by the facility in comparison with other applications in the same round of competition. Items

which may be considered would be higher quality cabinets, floor and wall finishes, dishwashers, carports, central computer or recreation rooms, emergency buttons in each unit, on site managers, air conditioning (especially if medically warranted) and playgrounds. Items deemed luxury would be similar to swimming pools or tennis courts. These items are meant only to be examples and are not to be considered complete lists. In each round all projects will be looked at and the amenities and qualities itemized will be analyzed on a whole basis and a point distribution will be determined. The added costs attributed to the project because of efficiency, higher quality and amenities will be considered on a project by project basis for a cost to benefit assessment: (8 points).

6. \_\_\_\_\_ Sponsor Characteristics (11 points):

a. \_\_\_\_\_ Sponsorship or partnership arrangement with a local government, public housing authority or private non-profit housing provider evidenced by a partnership agreement or signed agreement to participate. (3 points)

b. Participation by an entity with a demonstrated track record of quality experience in completed development or management of low income housing. The Board will consider all members of the development team and whether housing projects have been developed and operated with the highest quality either in Montana or other states. Special attention will be paid to existing projects, amount of active local community participation used to develop projects and a management entity with a good compliance track record and specialized training. If an entity has a poor demonstrated track record, whether with respect to developments in Montana or in other states, the Board reserves the right to allocate up to ten (10) negative points. The MBOH reserves the right to contact community officials, developer team references, credit bureaus, other state tax credit administering agencies and all other sources as appropriate (up to 3 points or as much as minus (-) 10 points for failure to respond within 10 working days of MBOH letter of inquiry).

c. Demonstration of a Montana presence. In order to assist in providing a better quality product consistent with the purposes of the MBOH and federal law, a development will qualify for points if a member of its development team is Montana based. One (1) point will be awarded for each of the following: (4 points maximum):

- Developer or Project Manager
- Contractor or Construction Manager
- Either the Consultant, Syndicator, Attorney, Accountant, Architect or Engineers
- If a developer has existing project(s) in Montana with a demonstrated quality product. A developer must demonstrate an active local community participation used to develop projects.

d.\* \_\_\_\_\_ Project involves existing housing as part of a community revitalization plan. Written confirmation should be submitted from a qualified public official stating that the project involves the use of existing housing as part of a community revitalization plan. (1 point).

7. \_\_\_\_\_ Readiness of the development to proceed (8 points):

A development may qualify for some or all of the points in this category.

- a. Land purchased or owned by sponsor- (3 points).
- b. Commitment for Financing. The financing letter must clearly state that there has been a complete underwriting of the project including ~~cashflow~~cash flow and market considerations- (3 points).
- c. Proper zoning in place including but not limited to intended use, Planned Unit Development (PUD) approval, conditional use approval, etc. (2 points).

8. Participation of Local Tax-Exempt Organization (2 points). Proposals involving significant participation by a local tax-exempt organization (local government, public housing authority, private non-profit housing providers), evidenced by a signed agreement to participate. Examples of significant participation would be screening and referring tenants through a formal agreement, donation of land or sale at a reduced price to enhance affordability, use of grant money to develop infrastructure, or significant fee waivers on city fees.

~~a. Proposals involving significant participation by a local tax-exempt organization (local government, public housing authority, private non-profit housing providers), evidenced by a signed agreement to participate. Examples of significant participation would be screening and referring tenants through a formal agreement, donation of land or sale at a reduced price to enhance affordability, use of grant money to develop infrastructure, or significant fee waivers on city fees.~~

9. Tenant Populations With Special Housing Needs\* (10 points). The rating received for this category will be based on identified community and state housing needs, and whether the proposed project addresses those needs. A project will receive one (1) point for each 10% of the units targeting the following identified needs:

~~The rating received for this category will be based on identified community and state housing needs, and whether the proposed project addresses those needs. A project will receive one (1) point for each 10% of the units targeting the following identified needs.~~

- a. Units targeted specifically for individuals with children (Family units) (2 bedrooms).
- b. Large Family (3 and 4 bedroom).
- c. Handicapped Units Exceeding Minimum Fair Housing Requirements.
- d. Units Targeted specifically for elderly, mentally or developmentally disabled (must include written agreement with service provider or advocate for the target group).

10. Public Housing or Other Housing Provider or Special Needs Waiting Lists\* (8 points). Applicants need to demonstrate that, from other waiting lists and public housing providers, this project focuses on the preponderance of that need. In addition to working with other housing providers in fair housing concerns and issues, applicant must establish a waiting list for the project prior to renting-up the units.

- a. Development characteristics correspond to needs shown by public housing or other Housing Provider or Special Needs waiting list tenants- (2 points).

b. Written commitment to give priority to households on waiting lists for public housing or waiting lists for other Housing Providers or Special Needs groups. Housing addresses market needs with rent levels appropriate to market addressed. If sponsors are using Public Housing Authority waiting lists to establish need, unit types and rents for the project must meet the needs of those tenants. Other housing provider waiting lists can be used to substantiate need, if in fact the project addresses those specific needs- (6 points).

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11. —Community Support (1-10 points). Developments with demonstrated community support will receive preference under the plan. This support must be project specific and address how the project meets the needs of the community. Generic support for affordable housing will receive no preference. The development must also document (market statistics or market study) that a market exists to support the project and that the project meets the needs of the community. Developments with the highest priority concerning market need in comparison with other applications in the same round of competition as well as overall level of need will receive a preference.

~~Developments with demonstrated community support will receive preference under the plan. This support must be project specific and address how the project meets the needs of the community. Generic support for affordable housing will receive no preference. The development must also document (market statistics or market study) that a market exists to support the project and that the project meets the needs of the community. Developments with the highest priority concerning market need in comparison with other applications in the same round of competition as well as overall level of need will receive a preference.~~

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12. —Intermediary Costs (1-10 points). Developments with the lowest percentage of intermediary costs are compared with other applications in the same round of competition. (Development fees, attorneys, consultants, architects, etc.) For projects with identities of interest, developer overhead and construction overhead, fees may also be considered intermediary costs. Soft costs will also be considered in this analysis.

~~Developments with the lowest percentage of intermediary costs in comparison with other applications in the same round of competition. (development fees, attorneys, consultants, architects, etc.)~~

~~For projects with identities of interest, developer overhead and construction overhead fees may also be considered intermediary costs. Soft costs will also be considered in this analysis.~~

13. Developer Knowledge and Responsiveness.

a. Applicants with weak management track records, i.e., fail to train personnel to monitor or maintain the project, receive one or more IRS Forms 8823, or fail to retrain management every three years may impact on the area of developer knowledge. MBOH desires that each person involved in such management training receive certification from a qualified management-training course (Minus (-) 10 points).

b. The MBOH may levy an additional negative 10 points against the application if MBOH generated letters requesting clarification or explanation are not responded to and received by ten (10) working days following date of postage from the MBOH Minus (-) 10 points.

\* Indicates federally mandated preference

**Total Points Achievable = 118. Small Developments must score a minimum of 70-80 points as a threshold for further consideration. Large projects must score a minimum of 90 points as a threshold for further consideration.**

**MBOH reserves the right to disapprove any development for any tax credit allocation, regardless of its ranking under the criteria outlined above.**

### **Fee Schedule (subject to change)**

~~1.~~ The total reservation-Reservation feeFee, including the application-Application feeFee, is 4.5% of the amount of the credit actually reserved. An application-Application fee-Fee equal to 1.5% of the amount of credit reservation requested in your application is payable with your application and is non-refundable. An application will not be considered received by the MBOH unless the MBOH receives the application-Application feeFee.

~~2.~~ The balance of the total reservation-Reservation fee-Fee (remaining 3% of the reserved credit after payment of the application-Application feeFee) is due at the time you enter a Reservation Agreement with the MBOH. Once you the enter a Reservation Agreement and paypartnership enters a Reservation Agreement and pays the total reservation-Reservation feeFee, the fee is non-refundable. If you the partnership fails to meet the conditions described in the Reservation Agreement, and therefore, do not receive a credit allocation, the MBOH will nevertheless retains your the total reservation-Reservation feeFee.

~~3.~~ Developments will be charged a reasonable compliance monitoring fee, to offset the costs incurred by the MBOH for required compliance monitoring. The compliance monitoring fee will be \$20.00 per low income unit (subject to change), payable at the time of the Owner's submission of each Annual Certificate of Program ComplianceOwner's Certificate of Continuing Program Compliance.

### **Determination Of Credit Amount**

Federal law mandates that, although a proposed development may be technically eligible for a credit amount, the state housing credit agency (MBOH) may not allocate more credit than is necessary for the financial feasibility of the development and its viability as a qualified low income housing project throughout the compliance period. With the passage of the Omnibus Budget Reconciliation Act of 1993, federal law now requires the MBOH to consider:

1. The sources and uses of funds and total financing planned for the project.
2. Any proceeds or receipts expected to be generated by the tax credits.

3. The percentage of costs used for project costs other than the cost of intermediaries.
4. The reasonableness of the developmental and operational costs of the project.

In addition to following federal law requirements, the MBOH has incorporating the "State Tax Credit Administration Standards", adopted by the National Council of State Housing Agencies (NCSHA), into its application review procedures.

Based on this evaluation, MBOH will estimate the amount of credit it will reserve for each application. This determination is made solely at MBOH's discretion, and **is not** intended to be a representation to anyone as to the feasibility of the development. Rather, it will serve as the basis for making a reservation of credits. A similar analysis will be done at the time of allocation and placement in service, when development costs are finalized.

Federal law permits MBOH to reserve a greater amount of credits than otherwise available for projects in a Qualified Census Tract or in HUD designated Difficult Development Areas. The increased credit amount is not automatic, and will only be approved on projects when the MBOH determines the credit is needed for financial feasibility.

### **Development Cost Limitations**

In an attempt to balance housing needs in Montana with appropriate use of the state's allocation of tax credit authority, the MBOH sets the following cost limitations for the purpose of calculating the tax credit.

~~1. —~~ Per unit costs/cost per square foot. The MBOH will evaluate per unit costs and cost per square foot for all projects for reasonableness, taking into account the type of housing, other development costs as detailed below, unit sizes, and the intended target group of the housing. The MBOH will also consider the area of the state and the community where the project will be located in this review.

~~2. —~~ Builder's overhead. Builder's overhead will be limited to a maximum of 2% of construction costs and improvements (i.e., site work, demolition, construction, construction contingencies, and other construction related costs including general requirements) in accordance with NCSHA standards.

~~3. —~~ General requirements. General requirements will be limited to 6% of total construction costs as defined above, excluding general requirements, in accordance with NCSHA standards.

4. Builder's profit and developer fees. The following fee limitations are in accordance with NCSHA standards:

a. ~~1)~~ Builder profit will be limited to 6% of construction costs as defined under the Builders Overhead Section above.

b. ~~2)~~ Developer fees will be limited to a maximum of 15% of total project costs (excluding the developer and builder fees, land costs, and costs of acquisition if a rehabilitation project). Consultant fees will be included as part of the developer fee.

Architectural, engineering, and legal fees are considered to be professional services, not consultant fees. Fees for professional services will be examined for reasonableness.

c. Developer fees will be limited to a maximum of 8% of costs of acquisition (excluding land costs) if a rehabilitation project.

d. Disclosure of developer/consultant fees commingled within the project and/or profit as a result of brokered activities will require a statement of total profit. If the developer/consultant receives a commission on the sale of the homes or structures to the multifamily project and also receives the contractor profit, at a minimum, the cost of the homes and the contractor profit and overhead must be subtracted from the total development cost before calculating the 15% maximum. Failure to fully disclose such activity may result in the project's disapproval. (See identities of Interest, below)

5. Identities of Interest. ~~Identities of interest are defined as a financial, familial, or business relationship that permits less than arms length transactions. Includes~~ This includes, but is not limited to, existence of a reimbursement program or exchange, common financial interests, common officers, directors, or stockholders, or family relationships between officers, directors, or stockholders. The Montana Board of Housing reserves the right to negotiate lower Developer and Builder fees on projects when an identity of interest exists between parties.

~~The Montana Board of Housing reserves the right to negotiate lower Developer and Builder fees on projects when an identity of interest exists between parties.~~

56. Operating Expenses. The MBOH ~~will~~ will evaluate operating expenses and vacancy rate projections for all projects for reasonableness, taking into account the type of housing, unit sizes, and the intended target group of the housing. The MBOH ~~will~~ also considers the location of the project within the area of the state and the community, ~~where the project will be located in this review.~~

67. Operating Reserves. Minimum operating reserves should equal four months of projected ~~i) operating expenses; ii) debt service payments; iii) annual replacement reserve payments;~~ using ~~Using~~ an acceptable third party source, this requirement can be met by ~~the following methods i) either~~ cash ~~ii) letter of credit from a financial institution-iii) or a~~ developer guarantee that a syndicator has accepted the responsibility for a reserve.

78. Replacement Reserves. Minimum replacement reserves should equal \$200 (\$150 for elderly projects) per unit annually for new construction and \$300 (\$250 for elderly projects) for rehabilitation developments. Exceptions may be made for certain special needs or supportive housing developments. Exceptions will need to be documented and will be reviewed on a case by case basis. In projecting replacement reserves (15 year pro-forma), developments should take into account a realistic rate of inflation foreseeable at the time of application.

The applicant will ~~be required to continue to comply~~ require continuous compliance with the development cost limitations established in this Qualified Allocation Plan, ~~and will be required to~~ The applicant will provide the MBOH with a disclosure of fees as part of the Accountant's Certification discussed in this document.

## Market Analysis

Developments submitting an application ~~regardless of the number of units~~ must submit a complete comprehensive Market Study prepared by a disinterested third party. Please refer to the instructions for the Tax Credit Supplement of the Uniform Application for complete requirements.

## Capital Needs Assessment

Developments that consist of the rehabilitation of an existing structure ~~will~~ need to submit a Capital Needs Assessment conducted by a competent party. Please refer to the instructions for the Tax Credit Supplement of the Uniform Application for complete requirements.

## State Law Requirements

The applicant and development team ~~will be required to agree to comply with and certify compliance~~ must certify and agree to comply with Montana State law requirements (e.g., certificate of contractor registration, ~~workers'~~ compensation, unemployment compensation and payroll taxes). ~~This~~ The MBOH will include this certification ~~will be included in the execution of~~ all Reservation and Carryover Allocation documents, ~~executed by the MBOH.~~

## Reservation

Once MBOH has ranked applications and determined credit amounts for each application, MBOH will make recommendations to the MBOH ~~Board of Directors~~ Board as to reservation of credits. A reservation is a commitment conditioned on evidence of timely progress toward completion of the development acceptable to MBOH, and compliance with federal tax credit requirements.

Once the ~~application has been approved by the~~ Board of Directors Board has approved the application for future reservation of tax credits, the applicant will have 90 days in which to provide evidence the project is progressing (i.e., purchase of land, conditional financing commitment). If the applicant can not show significant evidence toward meeting reservation requirements, the MBOH may withdraw conditional approval of the application.

## Status Reporting

All applicants ~~who receive~~ receiving reservations of credits will ~~be required to~~ provide written status reports every 90 days, beginning 90 days after the reservation date. The documentation regarding the progress should be development specific, and include such items as planning approval and building permits, firm debt and/or equity financing commitments, and construction progress.

The applicant must immediately notify the MBOH in writing if ~~there is any~~ changes occur in the project with respect to the Applicant, the Developer, or any other principle participant in the project. ~~Any~~ The Board reviews and approves any proposed major changes to the project including but not limited to quality of construction, unit composition, target group, location and changes in areas where the project has been scored based on the scoring outlined in this Allocation Plan, ~~must be reviewed and approved by the MBOH Board of Directors.~~ The review

and approval must happen prior to the change taking effect or being completed. Changes which are completed without Board approval could result in the loss of some or all credits.

### **Recapture Of Reservations**

~~Applicants with Board of Directors approval for future reservation or executed reservations will be subject to recapture of the approval or reservation if they are unable to provide evidence satisfactory to MBOH in their status reports of progress towards the completion of the project. The MBOH recaptures an approved Tax Credit reservation when a project fails to make successful process toward completion. Submitting status reports demonstrating satisfactory evidence of the project's completion fall squarely on the shoulders of the applicant. A site visit by the staff may be conducted prior to the issue of the IRS Form 8906.~~

### **Accountant And Owner Certification**

Prior to issuance of a Carryover Allocation or IRS Form 8609, the MBOH requires an independent third party CPA cost certification, including a statement of eligible and qualified basis for the project. The Accountant Certification must include a breakdown of costs similar to the project costs and uses of the application, including development cost limitation categories as discussed in this allocation plan. The owner must provide a certification, under penalty of perjury, providing the owners name and address, the placed in service date, taxpayer identification number, the project name and address, the total eligible and qualified basis, and the percentage of the project financed by ~~tax-exempt~~tax-exempt bonds.

### **Tax Credit Proceeds**

In order to adequately evaluate sources and uses for Low Income Housing Tax Credit projects, the sponsor/developer will be required to provide information to the MBOH regarding the proceeds or receipts generated from the tax credit. At application, expected proceeds must be estimated by the sponsor/developer. When equity sources are committed, the sponsor/developer must provide the MBOH with a copy of the commitment or agreement. Prior to issuance of IRS Form 8609, the MBOH will require the accountant's certification to include gross syndication proceeds and costs of syndication, even though the costs are not allowed for eligible basis.

### **Rural Development Projects**

~~On Rural Development projects, t~~he MBOH requires a copy of the final Rural Development cost certification, as well as the Accountant Certification of tax credit eligible and qualified basis, and the owner's certification. While a Rural Development project may be technically eligible for an amount of credit, such projects ~~s-are~~ frequently receives an awarded less than the maximum amount of credit, because less credit is required to fill the financing gap. The MBOH will award only the amount of credit determined necessary to make the project feasible.

### **Tax Exempt Bond Financed Projects**

Projects with tax-exempt financing under the volume limitation on private activity bonds are eligible to receive tax credits outside the state's tax credit allocation volume cap. With the

exception of not having eligible competition periods or submission deadlines, each project is required to submit the same information and meet the same requirements included in the current Qualified Allocation Plan as a project submitting an application under the State's tax credit allocation volume cap. If the minimum criteria are not met, the project will not receive an allocation of tax credits.

Projects with tax exempt financing must ~~also~~ submit a certification from the bond financing agency indicating that the project meets the public purpose requirements of the bonds and that the project is consistent with the needs of the community.

### **Carryover Allocations**

Federal law provides that the state housing credit agency may give a Carryover Allocation to certain qualified buildings which are placed in service not later than the close of ~~2004~~2005. Federal law requires that more than 10% of the expected basis in the project (including land) must be expended by the later of: ~~(i)a)~~ the end of the year in which the allocation was made, or ~~(ii)b)~~ six months following the date of the allocation, and that the owner must have title to the property in order for a project to qualify for a carryover commitment. In addition, the developer must have a loan commitment from a lender outlining the terms and conditions of financing, or a letter evidencing acceptance of an approved loan by the lender prior to receiving a Carryover Allocation. The developer must ~~also~~ provide evidence that the Land Use Restriction Agreement (Declaration of Restrictive Covenants for Low-Income Housing Credits) has been executed and recorded.

Once a Carryover Allocation is provided, the developer ~~will be required to provide~~ provides written status reports to the MBOH outlining progress toward completion every 90 days, beginning 90 days from the Carryover Allocation date. The documentation regarding the progress should be development specific, and include such items as planning approval and building permits, firm debt and/or equity financing commitments, and construction progress.

### **Placed In Service/Issuance Of 8609**

The MBOH will not issue an IRS Form 8609 until a building is placed in service, ~~and~~ the MBOH has completed the final credit award evaluation, and the developer has provided an Accountant's Certification, a recorded executed original of the Restrictive Covenant agreement including the date, deed book and page numbers of record, and an Owner's Certification that the building has been placed in service. A building is placed in service when the building is certified or officially declared as available for occupancy.

### **Compliance Monitoring Required**

Federal law requires state allocating agencies (MBOH) to monitor compliance with provisions of Section 42 of the Internal Revenue Code. Federal law requires allocating agencies to provide a procedure the agency will follow in monitoring for non-compliance and inform tax credit recipients (owners) of procedures and requirements. Included in the requirements are procedures for notifying the Internal Revenue Service (IRS) of any non-compliance of which the allocating agency becomes aware.

The following procedure outlines MBOH plans for monitoring compliance on tax credit projects. Federal income tax regulations related to Procedures for Monitoring Compliance with Low-Income Housing Credit Requirements are published in 26 CFR Part 1 and 602.

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## General

### Submission Deadlines

Owners must submit Owner Certifications (a separate certification must be submitted for each project having an allocation of tax credits) and Tenant Income Certifications on the prescribed forms prior to January 25th of each year. At the owners request to MBOH an earlier certification date may be set. However, once the certification date is set, certifications will be due at the same time each year. Federal regulations stipulate there must be no more than 12 months between certifications.

### Fees

An annual fee of \$20 per low income unit (subject to change) will be payable to the MBOH when the owner submits annual certifications. The fee is to offset the costs of tax credit monitoring procedures.

~~Owner Certifications must be signed by an Officer or owner of the~~An Officer or owner of the entity which owns the property must sign the Owners Certification. Managers or management companies of projects who are not owners may not sign this document.

### Compliance Monitoring

Notification of changes to ownership, property management companies, managers, site managers, or changes to points of contact must be made to the MBOH prior to, or immediately upon affected change by the partnership.

### Compliance Term

The owner must comply with the unit set aside percentage represented by the owner in the Declaration of Restrictive Covenants for Low Income Housing Tax Credits. Owners must continue the set aside for the entire fifteen-year compliance period. Owners who received credits after 1989 must continue the set aside for the fifteen year compliance period, plus the 15 year extended use period. The owner must ~~also~~ maintain the set aside for any additional period covered by the Declaration of Restrictive Covenants.

### Partnership Documentation

Once the limited partnership documentation has been completed, a copy of the agreement must be forwarded to the MBOH compliance office.

### **Owner Annual Certification (26 CFR 1.42(c)(1))**

The MBOH will require a signed statement of Owner Certification from the owner on an annual basis. This statement must be filed with the MBOH every year during the compliance period, and if applicable, during the extended use agreement. Certifications are contained in Exhibit B of the Restrictive Covenants for any projects with Executed and filed Restrictive Covenants. The Final Regulations published in ~~September~~,September 1992, added several items to the certification requirements. Owners must file annual certifications on the form provided by MBOH. This form may not be substituted.

### **Tenant Income Certifications (26 CFR 1.42 (c)(2))**

An annual Tenant Income Certification must be completed and signed by the owner/manager and tenant, and filed with the MBOH, in addition to the Owners Annual Certification. Projects eligible for an exemption from annual certification under IRS Revenue Procedure 94-64, (which applies to projects which are 100% low income where every unit is occupied by a qualified tenant and credit is claimed on 100% of the units) must provide certifications for all tenants the first year or each year until the project reaches 100% low income occupancy. Any exemptions from annual certification granted do not exempt the owner from obtaining and providing to the MBOH certifications for all new tenants each year.

1.     —For Rural Development projects, the MBOH will accept Form FmHA 1944-8-Tenant Certification. Tax credit income is based on the Annual Income (section 17.f.) rather than Adjusted Income portion of the form. MBOH will not require owners to send in documentation supporting the numbers represented on the form with the Tenant Certifications. MBOH will review supporting documentation as part of the On-Site Review process.

2.     —For all other projects, the owners must complete the MBOH Certification of Tenant Eligibility and Income Verification and file it with the MBOH on an annual basis for each tenant. MBOH will not require owners to send in documentation supporting the numbers represented on the form with the Tenant Certifications. MBOH will review supporting documentation as part of the On-Site Review process. With MBOH approval, an owner's form may be substituted, if it contains all the required information. Please note the tenant must certify income "under penalty of perjury".

### **Annual Operating Expense Information**

All project owners must submit operating income and cost information for the projects latest fiscal period. This information will be used to maintain a database of all tax credit projects in the state.

### **1<sup>ST</sup> Year 8609**

All project owners must submit a copy of the project's first year 8609's that were or will be filed with the IRS.

### **On-Site Review Process (26 CFR 1.42 (c)(2))**

The MBOH will perform an on-site review and inspection of each project at least once every three years. MBOH will notify the owner/manager in advance prior to the review. During this review MBOH staff ~~will~~:

1. ~~\_\_\_\_\_~~ Tours and inspects the project and go in a minimum of 20% of the units in each building. MBOH, at its discretion, may request to view additional units based on the initial inspection. The MBOH will not notify the Owner/Manager which units are to be sampled in advance.
2. ~~\_\_\_\_\_~~ Inspects supporting documentation for numbers represented on the Certification of Tenant Eligibility and Income Verification or the FmHA Tenant Certification for a sample of tenants. The MBOH will not notify the Owner/Manager which tenant records ~~will~~ are to be sampled in advance.
3. ~~\_\_\_\_\_~~ Inspects rent records for a sample of units.
4. ~~\_\_\_\_\_~~ If applicable, reviews completed IRS Forms 8609 and Schedule A of Form 8609 for the project for the last tax filing.

If MBOH determines it is necessary, projects may be inspected more than once every three years. The cost of any additional inspections will be billed to the respective project.

Under the inspection provision (26 CFR 1.42 (d)), the MBOH ~~must have the right to~~ has the authority to perform an on-site inspection of any low-income housing project at least through the end of the compliance period of the buildings in the project. As discussed under "Compliance Term" above, ~~this would include on-site reviews may continue through~~ the extended use period for applicable projects.

~~If at any time, Section 42 of the Code or regulations implementing said Section require the MBOH to undertake additional monitoring of the Section 42 Occupancy Restrictions or, alternatively, the MBOH chooses to undertake additional monitoring of the Section 42 Occupancy Restrictions, concerns over occupancy restrictions, under Section 42 of the Code or the implementing regulations require the MBOH to undertake additional monitoring (or the MBOH elects to undertake additional monitoring), the MBOH will require the owner to substantiate compliance. The Owner will take any and all actions reasonably necessary and required by the MBOH to substantiate the Owner's compliance with the Section 42 Occupancy Restrictions to comply.~~ The Owner will pay a reasonable fee to the MBOH for such monitoring activities performed by the MBOH.

### **Records Retention (26 CFR 1.42 (5)(b))**

Federal regulations require the owner of a low income housing project receiving tax credits to retain the following information for each qualified low income building in the project. The information must show for each year in the compliance period:

1. The total number of residential rental units in a building (including the number of bedrooms and the size in square feet of each residential rental unit).
2. The percentage of residential rental units in the building that are low income units.

3. The rent charged on each residential rental unit in the building (including any utility allowances).
4. The number of occupants in each low-income unit if the rent was determined by the number of occupants in each unit (projects receiving credit before the Revenue Reconciliation Act of 1989).
5. The low income unit vacancies in the building and information that shows when, and to whom, the next available units were rented. If a unit is left vacant, or in a mixed use project is rented to a non-qualifying tenant, the owner must maintain documentation showing a diligent attempt was made to rent the unit to a qualifying tenant.
6. The annual income certification of each low income tenant (by unit), including annual certifications for each continuous tenant.
7. Documentation to support each low income tenant's income certification. This ~~may~~ **must** include a copy of a) verification of income from third parties such as employers or state agencies paying unemployment compensation, b) the tenant's federal income tax return, and c) Forms W-2, ~~or verification of income from third parties such as employers or state agencies paying unemployment compensation. Tenant income is calculated in a manner consistent with determination of income under Section 8 housing.~~
8. The eligible basis and qualified basis of the building at the end of the first year of the credit period.
9. The character and use of any non-residential portion of the building included in the eligible basis of the building, if applicable.

~~Owners should also retain records relating to the amount of credit claimed for the Low Income Housing Tax Credit, including the Form 8609 and Schedule A of Form 8609.~~

Under the record retention provision of the IRS compliance regulations, the owner is required to retain the above mentioned records for at least 6 years after the due date for filing the federal income tax return for that year. Records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date for filing the federal income tax return for the last year of the compliance period. Owner should also retain records relating to the amount of credit claimed for the Low Income Housing Tax Credit, including the Form 8609 and Schedule A of Form 8609.

### **Notice To Owner (26 Cfr-CFR 1.42 (Ee)(2))**

Under the notification-of-noncompliance provisions, the MBOH must provide prompt written notice to the owner if MBOH does not receive the certification(s) described in this document, or is not permitted to inspect the tenant income supporting documentation, rent records, or the project. In addition, the MBOH must provide prompt written notice to the owner if MBOH discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42.

### **Correction Period (26 CFR 1.42 (e)(4))**

The owner will be given a correction period of up to 90 days from the date of notice. During this time, the owner must supply any missing certifications and/or bring the project into compliance with the provisions of Section 42. IRS regulations require MBOH to notify the IRS even if the non-compliance is cured so the IRS may determine whether a penalty is necessary. IRS does not intend to have MBOH determine whether penalties will be assessed.

If the project is out of compliance, a penalty may apply to all units in the project. The IRS will determine whether penalties will be assessed for the project. Penalties may include:

1. Recapture of any accelerated portion of the tax credits for prior years.
2. Disallowance of the credit or a portion of the credit for the entire year in which the non-compliance occurs.
3. Assessment of interest for the recapture year and previous years.

### **Notice To Irs-IRS (26 Cfr-CFR 1.42 (Ee)(3))**

MBOH must file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance" with the IRS no later than 45 days after the end of the correction period, and no earlier than the end of the correction period. Again, MBOH must file this notice whether or not the noncompliance or failure to certify is corrected.

### **Liability (26 CFR 1.42 (g))**

Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. MBOH's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's noncompliance.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relation to, the compliance monitoring of a low-income housing project.

### **Allocation Plan Revisions**

This Allocation Plan may be amended at any time after giving public notice, scheduling and holding a public hearing, and with the approval of the MBOH and the Governor.

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### **Closing**

The MBOH is charged with allocating no more tax credits to any given development than is required to make that development economically feasible. This decision shall be made solely at the discretion of MBOH, but in no way represents or warrants to any sponsor, investor, lender, or others that the development is ~~in fact~~ feasible or viable.

MBOH's review of documents submitted in connection with this allocation is for its own purposes. In allocation of the tax credits, MBOH makes no representations to the owner or

anyone else regarding adherence to the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing Low Income Housing Tax Credits.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relations to, the allocation of the Low Income Housing Tax Credit.

[The following high cost areas are from 2002 and are subject to change in September.](#)

### **HIGH COST AREAS LOW INCOME HOUSING TAX CREDITS**

Section 42(d)(5)(C) of the Internal Revenue Code defines a Qualified Census Tract as any census tract or equivalent geographic area in which at least 50% of households have an income less than 60% of the Area Median Gross Income (AMGI). Section 42 defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land and utility costs relative to the AMGI.

When an area, which can be a county or a specific census tract, is designated as either a Qualified Census Tract or a Difficult to Develop Area, a project proposed for a high cost area is eligible for an increase in eligible basis of up to 130%. This means that a greater amount of tax credits than otherwise available may be approved, if it is determined that the greater amount is needed for financial feasibility of given projects.

### **MONTANA BUREAU OF CENSUS DESIGNATED QUALIFIED CENSUS TRACTS**

<u>County/Metropolitan Area</u>	<u>Tract(s)</u>
Beaverhead County	9894
Big Horn County	9641, 9642
Blaine County	9723, 9725
Carbon County	9566
Carter County	9602, 9603
Dawson County	9531, 9532
Flathead County	0010
Gallatin County	9861, 9864, 9866
Glacier County	9761, 9762, 9763
Golden Valley County	9681
Hill County	9735, 9737
Lake County	9954
Lewis and Clark County	9788, 9789, 9796
Madison County	9882
Meagher County	9838
Missoula MSA, Missoula County	0002.01, 0003, 0007
Musselshell County	9685, 9687
Petroleum County	9691
Pondera County	9771
Ravalli County	9933
Roosevelt County	9511
Rosebud County	9627, 9628
Sanders County	9966
Sheridan County	9503
Silver Bow County	0001
Great Falls MSA, Cascade County	0004, 0005, 0006, 0007
Billings MSA, Yellowstone County	0001, 0002, 0003
Valley County	9550

MONTANA HUD DESIGNATED DIFFICULT TO DEVELOP AREAS

Beaverhead County	Big Horn County	Blaine County	Broadwater County
Carbon County	Carter County	Chouteau County	Custer County
Daniels County	Deer Lodge County	Fergus County	Gallatin County
Garfield County	Glacier County	Golden Valley County	Granite County
Judith Basin County	Lake County	Lincoln County	Madison County
McCone County	Meagher County	Mineral County	Musselshell County
Park County	Petroleum County	Phillips County	<b>Pondera County</b>
Powder River County	Powell County	Prairie County	Ravalli County
Richland County	Roosevelt County	Sanders County	Sheridan County
Teton County	Treasure County	Valley County	Wheatland County
Wibaux County			