

## Summary of proposed changes

**Change 1** – changes the dates of the application timeframe. These are similar dates to the 2000 process.

-	<u>Submission</u>	<u>Application Presented to Board</u>
	February 3, 2001	April Board Meeting
	April 27, 2001	June Board Meeting
	July 27, 2001	September Board Meeting

**Change 2** – It was a concern that an applicant for tax credits may already have a project in the works that has been given tax credits from a previous year, yet that project is not being completed in a timely manner. The addition below always the staff and Board language to deny the second or future applications if quality and timeliness become a concern.

Applications received by the submission date of the application cycle will first be reviewed for completeness and soundness of the development. **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. Criterion which may be used, but not limited to, in this review, is 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.**

**Change 3** – One more factor was added to number 5 to include getting points for the items listed. It was a concern of developers that consideration was not being given for a higher quality project. Eight additional points are being suggested.

5. Project Characteristics (18 points)

- d. **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 their cost to benefit ratio. (8 points)**

**This is not meant to create luxury apartments but is designed to give extra points towards tax credits for a well thought out, designed and built project.**

**Change 4 –** c. has been added and the points have been changed to allow points for being completely ready to go yet still give projects a chance if zoning might still be an issue until the tax credit is issued.

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. Conditional Commitment for Financing. The financing letter must clearly state that there has been a complete underwriting of the project including cashflow 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)**

**Change 5 –** More specific language is being suggested to show that market need will be a comparison between projects. Also the points are a scale not 0 or 10.

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.

**Change 6 –** The points are a scale not 0 or 10.

12. Intermediary Costs (1-10 points)

**Change 7 –** The change in language is to make it clear that these are only examples and not an all inclusive list. Any significant change requires that the Board of Housing be notified.

**The applicant must immediately notify the MBOH in writing if there is any change in the project with respect to the Applicant, the Developer, or any other principle participant in the project. 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.**

**Change 8** – This change makes the number of units to inspect a specific percentage to insure fair and uniform treatment.

1. **Tour and inspect the project and go in a reasonable number a minimum of 20% of the units based on project size and number of years in service in each building. MBOH, at its discretion, may request to view additional units based on the initial inspection.**

**Change 9** - Currently the Board has authorized funds for inspections that include an every three year cycle. If a project continues to create or have problems and needs additional inspections the project will need to pay for these inspections.

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.**

Other Administrative changes that will not be a part of the QAP but will be followed and designated in the application are:

- No changes to the application will be allowed after the submission deadline. Additional comment letters will be accepted.
- The Board strongly encourages applicants to have a representative present at the Board meeting when credits are awarded to answer questions.

**QUALIFIED ALLOCATION PLAN  
FOR THE LOW INCOME HOUSING TAX CREDIT  
2001**

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 3,425 low income rental units in Montana.

The Omnibus Budget Reconciliation Act of 1989 requires the appropriate administering agencies (in this case, the MBOH) to develop a Qualified Allocation Plan (QAP) defining the process by which it will 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 approved by the MBOH Board of Directors on November 13, 2000, and was distributed for public comment and subjected to public hearing. This final plan was approved by the Governor of Montana Marc Racicot, on , November \_\_\_\_, 2000.

For 2001 the MBOH will make available its authorized volume cap of approximately \$1,100,566 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.

Application Process

The MBOH makes an allocation of 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, credits will be available through a two-step process (reservation and allocation).

Applicants for reservation may apply to receive a 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.**

Submission  
February 2, 2001  
April 27, 2001  
July 27, 2001

Application Presented to Board  
April Board Meeting  
June Board Meeting  
September Board Meeting

Applications must be complete when submitted to the MBOH. Minor corrections to applications may be allowed, but applications requiring substantial revision or which are substantially incomplete will be deferred to the next application round. Applications submitted for the July 27th round must demonstrate the ability to meet Carryover Allocation requirements (title to the property, ability to certify that 10% of the total project costs have been expended prior to December 15th, firm financing commitment).

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

If all of the authorized credits are reserved after a particular cycle, additional applications will be placed on a waiting list prioritized 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 for completeness and soundness of the development. **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. Criterion which may be used, but not limited to, in this review, is 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.** 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 project financing section of 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 statistics or market study) that a market exists to support the project and that the project meets the needs of the community. If a project proposes a property tax exemption, documentation of the public hearing must be submitted with the application or the project will be underwritten as if no exemption will be received. Incomplete or unsound applications will be returned for potential submission in the next round. 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.

As part of its review of applications, the MBOH will contact 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).

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 evaluations will be conducted prior to awarding credit (at application, when a reservation or binding commitment is made, and 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 2001 is approximately \$1,103,474.

1. Ten percent [10%] of the credit available (approximately \$110,347) 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%] (approximately \$220,694) of the credit amount is reserved for developments receiving \$70,000 or less in credits. If eligible applications are not received to use the set aside, the credits will be available for general allocation after the April 27, 2001 application round.
3. Twenty-five percent [25%] of the total annual credit amount (approximately \$275,868) 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.

### 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.

**Each application must include a narrative addressing the twelve development criteria and how the application meets each criteria, the appropriate market statistics or 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. 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.**

- 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 special preference, and the following points, for percentage of eligible units at the following area median income levels. A development may receive 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 ~~the~~ 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. (4 points)

**d. 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 (10 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 (3 points).
- 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.

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 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\* (3 points)

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.

- a. 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)

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)

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.

12. Intermediary Costs (1-10 points)

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.

\* Indicates federally mandated preference

**Total Points Achievable = 118. Developments must score a minimum of 70 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 fee, including the application fee, is 4.5% of the amount of the credit actually reserved. An application 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 fee
2. The balance of the total reservation fee (remaining after payment of the application fee) is due at the time you enter a Reservation Agreement with the MBOH. Once you enter a Reservation Agreement and pay the total reservation fee, the fee is **non-refundable**. If you fail to meet the conditions described in the Reservation Agreement, and therefore, do not receive a credit allocation, the MBOH will nevertheless retain your total reservation fee.
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 the **each** Annual Certificate of 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 incorporated 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. For projects with identities of interest between the sponsor/developer and builder/contractor, the developer and builder 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. Identities of interest are defined as a financial, familial, or business relationship that permits less than arms length transactions. 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.
- Developer fees will be limited to a maximum of 8% of costs of acquisition (excluding land costs) if a rehabilitation project.
- b. For projects with arms length transactions between the sponsor/developer and builder/contractor, builder profit and developer fees will be considered separately.
- 1) Builder profit will be limited to 6% of construction costs as defined under the Builders Overhead Section above.
- 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.
- Developer fees will be limited to a maximum of 8% of costs of acquisition (excluding land costs) if a rehabilitation project.
5. Operating Expenses. The MBOH 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 consider the area of the state and the community where the project will be located in this review.
6. Operating Reserves. Minimum operating reserves should equal four months of projected i) operating expenses; ii) debt service payments; iii) annual replacement reserve payments; using an acceptable third party source, this requirement can be met by the following methods i) cash ii) letter of credit from a financial institution iii) developer guarantee that a syndicator has accepted.
7. 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 with the development cost limitations established in this Qualified Allocation Plan, and will be required to 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 with less than twelve (12) units must complete Exhibit B of the application Rental Market Statistics which provides raw information concerning the rental market in the area of the proposed development. Please refer to the Exhibit B instructions and form of the Tax Credit Supplement of the Uniform Application for complete requirements

Developments submitting an application with twelve (12) or more units must submit a complete Market Study. 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 with Montana State law requirements (e.g., certificate of contractor registration, workers' compensation, unemployment compensation and payroll taxes). This certification will be included in 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 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 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 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 change in the project with respect to the Applicant, the Developer, or any other principle participant in the project. 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.

### 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 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, the 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 owners certification. While a Rural Development project may be technically eligible for an amount of credit, such projects are frequently 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 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 2003. Federal law requires that more than 10% of the expected basis in the project (including land) must be expended at the end of 2001 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 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.

## 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.

### 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.

### 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, 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 owners 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. **Tour and inspect the project and go in a reasonable number a minimum of 20% of the units based on project size and number of years in service in each building. MBOH, at its discretion, may request to view additional units based on the initial inspection.**
2. Inspect 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 be sampled in advance.
3. Inspect rent records for a sample of units.
4. If applicable, review 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 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 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, 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. 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 include a copy of the tenant's federal income tax return, 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.

#### NOTICE TO OWNER (26 CFR 1.42 (e)(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 (26 CFR 1.42 (e)(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.

#### 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.