New York State
Division of Housing and Community Renewal

Using the

Low-Income Housing Tax Credit Program for Special Needs Housing

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1. PURPOSE AND ORGANIZATION OF PRIMER

DHCR has commissioned this primer with the goal of promoting the use of the Low-Income Housing Tax Credit (LIHTC) Program among special needs housing providers. There are many nonprofit organizations in the special needs housing field that are already familiar with the Program and have used it successfully to finance housing in the past. Nevertheless, there are also many others that are unaware of the Program's benefits, and are somewhat discouraged by its apparent complexity.

The purpose of this primer is to familiarize special needs housing providers with the use of LIHTC to finance low-income housing. We trust that it will be of value to both beginner and expert audiences. In terms of the organization, we provide a brief introduction to the LIHTC Program and its evolution in Section 2. Sections 3 and 4 cover the types of projects that are eligible, the type of ownership that is necessary for LIHTC projects, the rent and income restrictions imposed by the Program, and the detailed process of calculating LIHTC amounts. Section 5 explains compliance requirements under LIHTC regulations. These first five sections talk about the Program in general and not necessarily from a special needs perspective.

Experienced developers should find Sections 6 and 7 particularly informative. These sections focus on the challenges of using the Program to provide special needs housing, and of using the Program with other sources of funding. Sections 8 and 9 include information on selling the tax credits, and the risks that LIHTC financing entails for both the sponsor and the investor. Finally, Section 10 includes case studies of LIHTC projects for special needs populations.

2. HISTORY AND PURPOSE OF LOW-INCOME HOUSING TAX CREDITS (LIHTC)

Tax credits are dollar-for-dollar reductions in the federal or state tax liability of individuals or organizations, subject to certain limitations. Low-Income Housing Tax Credits (LIHTC) reduce federal tax liability and are obtained by those who construct, acquire, or rehabilitate low-income rental housing. Under LIHTC, low-income households are defined by the IRS as households with incomes that are at or below 60% of the Area Median Income (AMI[1]).

The LIHTC Program was instituted by Congress in the Tax Reform Act of 1986, as a way to encourage private investment in rental housing that is reserved for low-income households. The Program operates under Section 42 of the Internal Revenue Code of 1986, as amended.

Organizations involved in the construction, acquisition, or rehabilitation of low-income rental housing obtain LIHTC in an amount determined by the costs of the project and the percentage of the units in the project that are devoted to low-income households. These organizations sell the LIHTC generated by the project to a private investor, usually a syndicated partnership or widely held corporation, that claims the LIHTC annually for ten years and reduces its federal tax liability. As part of this transaction, the private investor becomes part of the ownership entity for the project, usually through the formation of a limited partnership where the investor limited partner holds 99% or more of the project ownership (in order to maximize its share of tax benefits).

In New York State, LIHTC can usually be obtained in two ways:

- By submitting an application to one of the designated Housing Credit Agencies. These include the New York State Division of Housing and Community Renewal (DHCR), the New York State Housing Finance Agency (HFA), and New York City Housing Preservation and Development (HPD).
- Through the use of tax-exempt bond financing, which is accompanied by as-of-right four percent tax credits.

Every year, each state is allocated an amount of LIHTC equal to $1.25 times the state population. New York State's allocation for 1999 equaled $22,718,750. Unused and returned credits can be carried forward for a period of one year, after which they go to a national pool to be allocated among states as additional credit. Taken together, the per capita allocation plus the unused and returned credits are known as the "state credit ceiling." LIHTC obtained through the use of tax-exempt bonds are not counted against the per capita state limit.

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[1] The AMI is calculated annually by HUD and is the basis for determining whether a person or household is eligible for a wide range of government assistance programs.

DHCR and other Housing Credit Agencies allocate LIHTC according to a Qualified Allocation Plan (QAP) adopted by them and required by Section 42 of the Code. Details on DHCR's allocation process and the criteria used to select projects are explained in Section 4. Housing Credit Agencies are also responsible for monitoring projects during design and construction, and overseeing their operation to ensure compliance with statutory requirements.

DHCR allocates most of the 9% LIHTC that New York State has authority to allocate. With regard to the other Housing Credit Agencies, on average, HPD allocates $8 to $9 million in LIHTC per year. HFA also has 9% LIHTC authority, in an amount less than HPD.

Projects eligible for LIHTC must meet one of the following income-related occupancy requirements:

1. 20% of the units must be set aside for households whose incomes are at or below 50% of the AMI, *or*
2. 40% of the units must be set aside for households whose incomes are at or below 60% of the AMI.

These are minimum occupancy requirements. Nevertheless, most projects that receive LIHTC allocations in New York State set aside 100% of the units for households earning 60% or less of the AMI. According to the regulations, low-income rents must not exceed 30% of the targeted household income.

For an investor to claim ten years of LIHTC, a project must meet these occupancy requirements for at least fifteen years. In New York State, to receive an allocation, the sponsor must be willing to enter into an extended use agreement that requires the organization to maintain the housing as low-income for an additional fifteen-year period. The goal of this extended use agreement is to induce people to provide affordable housing for longer periods.

LIHTC are obtained at two different Credit rates, which are applied to a project's eligible costs to determine the LIHTC amount. The 9% Credit rate yields a present value of 70% of the qualified basis for new construction or substantial rehabilitation, provided no federal subsidies such as below-market federal loans and tax-exempt bonds are involved in the project. The 4% Credit rate yields a present value of 30% of the qualified basis for the acquisition of projects and for construction of federally subsidized projects. The 9% and 4% Credit rates are nominal rates, since the actual rates used change every month. These rates are published monthly by the Internal Revenue Service and can be found in the Federal Register. Once the LIHTC rates for a project are chosen, they remain at that level throughout the project's Credit period.

The LIHTC Program has become a popular way of financing low-income housing. States usually receive applications requesting three times as many or more credits than they have authority to allocate. LIHTC have become a hot commodity, and investors are increasing the prices paid for them. At the start of the LIHTC Program, investors paid around 42 cents per LIHTC dollar. In the late 1990s, LIHTC have been purchased for 70 to 80 cents per LIHTC dollar in New York State.

The per capita allocation of LIHTC has remained unchanged since the LIHTC Program was instituted in 1986 and has eroded with inflation. Currently, there is an initiative before Congress to gradually increase the per capita allocation of LIHTC to $1.75 and index it to inflation. The Clinton Administration has included a proposal to increase the per capital allocation to 1.75 in 2001 and index it to inflation in its FY2001 budget proposal.

3. LOW-INCOME HOUSING TAX CREDIT ELIGIBLE PROJECTS

LIHTC can be used to finance different types of low-income housing development projects, including acquisition, rehabilitation, and new construction. LIHTC may also be utilized for low-income housing development projects that are already using other federal subsidies. Generally, tax credits issued at the 9% rate are used in *new construction* and *substantial rehabilitation* projects. Tax credits issued at the 4% rate are used for *acquisition* and *construction projects already using a federal subsidy*. The Historic Preservation Tax Credit is also available for development projects that involve the *preservation of historic structures*. This is a 20% tax credit that is available to the taxpayer in the year in which the project is placed in service.

To understand how tax credits work, it is useful to become familiar with the following terms:

Placed in Service Date: This is the date the building is ready and available for occupancy. Most commonly, this is the date a Certificate of Occupancy is issued.

Eligible Basis: These are the housing project development expenditures that are eligible for obtaining tax credits. Eligible types of projects are described below. (See page 17 for a detailed list of eligible expenses.)

Federal Subsidy: Any type of tax-exempt financing provided by a state or local government and low-interest loans issued by the Rural Development Administration Multi-Family Program. There are some exceptions regarding HUD Community Development Block Grants (CDBG) and HOME funds (see below).

Low-Income Housing: For the purpose of the LIHTC Program, housing that is reserved for households with incomes at or below 60% of the AMI.

A more detailed description of each type of LIHTC eligible project is provided below.

A. Types of LIHTC Projects

1. New Construction

The new construction of low-income housing units is eligible for LIHTC for each of the first ten years of operation. The LIHTC amount equals approximately 9% of the qualified development cost for the low-income housing units in a complex. If the project is being financed with a federal subsidy, the LIHTC amount equals 4% of the qualified development costs.

2. Rehabilitation

An existing structure (occupied or vacant) that is rehabilitated for use as low-income housing is eligible for LIHTC issued at the 9% rate if no federal subsidies are used. If a federal subsidy is used, then the Credit rate is 4%. In either case, the rehabilitation expenditure must be equal to or greater than $3,000 per low-income unit for LIHTC eligibility.

3. Acquisition

LIHTC may be earned on the acquisition of an existing building at the nominal 4% rate, provided the owner undertakes a minimum rehabilitation of $3,000 per unit and meets the *ten-year previous ownership rule* (see below). The rehabilitation of the acquired building (occupied or vacant) may earn LIHTC at 9% (if no federal subsidies are used) or 4% (if federal subsidies are used). For accounting purposes, the acquisition and rehabilitation of a building are normally treated as two building transactions, the first being the acquired structure, and the second being the rehabilitation undertaken on the acquired structure. The total costs and the LIHTC eligible basis of each are calculated separately.

Ten-Year Previous Ownership Rule

A key requirement for a LIHTC acquisition project is the *ten-year previous ownership rule*. This rule states that the building to be acquired must not have changed ownership and been placed in service during a ten-year period prior to the acquisition. A building that has not been used in ten or more years can claim the acquisition credit even if its ownership has changed, given that it has not been placed in service during that period.

Waiver of the Ten-Year Previous Ownership Rule

The Internal Revenue Service waives the *ten-year previous ownership rule* if the LIHTC project falls into one of the following categories:

- Federally assisted properties that are at risk of being converted into non-low-income housing or of losing low-income units
- Properties acquired from a federally insured depository institution that is in default
- Federally assisted properties that are troubled or distressed
- Single-family residences previously used by an owner-occupant as a primary residence
- Properties that changed owners through a non-taxable exchange or contribution of property
- Properties that changed ownership due to death of the owner, acquisition by a governmental or nonprofit organization, and as a result of foreclosure, if the property is sold within 12 months.

4. Historic Preservation

A federal tax credit is available for the rehabilitation of historic structures under Section 47 of the Internal Revenue Code. Historic structures are those deemed to be historically significant by a local, state, or federal authority. The structure or building itself may be individually significant, or significant as part of a historic district. The Historic Preservation Tax Credit (HPTC) equals 20% of the project's eligible basis. The eligible basis for an HPTC project includes all construction costs, with the exception of site work and landscaping, and all construction-related soft costs, such as architectural services and construction period interest. Historic Preservation projects do not have to include housing.

In order for the Historic Preservation Tax Credit to be claimed, the New York State Historic Preservation Office (SHPO) and the U.S. Department of the Interior must determine the following:

- The structure has historic significance, and
- The construction work meets the federal standards for the rehabilitation of historic structures.

A three-step application or certification process is required to prove compliance, and it is recommended that organizations engage a historic preservation consultant or architect to advise them and interface with the SHPO and the Department of the Interior.

Historic Preservation Tax Credits can be used with LIHTC projects. When the HPTC is claimed, the amount of that credit is deducted from the total LIHTC eligible basis before the calculation of the LIHTC amount. (Please see *Example B: LIHTC and Historic Preservation Credits*, included on page 29.)

The Historic Preservation Tax Credit is available to the taxpayer in the year in which the building is placed in service. The whole of the 20% Historic Preservation Tax Credit can and normally is claimed for that year. A Certificate of Occupancy is generally considered evidence of placement in service, and there is no actual occupancy requirement for claiming the Historic Preservation Tax Credit. Compliance with historic rehabilitation guidelines is monitored during a five-year recapture period.

5. Projects with Federal Subsidies

Low-income housing development projects financed in part by a federal subsidy may claim LIHTC at the 4% rate. As noted above, federal subsidies include any type of tax-exempt financing provided by a state or local government and low-interest loans under the Rural Development Administration Multi-Family Program. There are, however, some exceptions:

- The use of a <u>federally subsidized construction loan</u> *does not* prevent a project from claiming the 9% tax credit, provided the loan is paid off before the building is placed in service. Nevertheless, any grants received *after* a building is placed in service reduce the annual tax credit amount for that year and subsequent years. This is because the eligible basis is reduced by the amount of the grant.
- <u>HUD Community Development Block Grants (CDBG) and HOME funds</u> *are not* treated as a federal subsidy for the purpose of determining a project's eligibility for the 9% Credit rate. These funds, however, must be provided to a project as a *loan* and not as a grant, in order to be included in basis and become a part of the LIHTC calculation. This is usually accomplished by lending the funds to the project at 1% interest payable from excess cash flow. Nevertheless, if HOME funds are used in an

area with a 30% bonus,[2] the money must be lent at the Applicable Federal Rate (AFR) and can no longer be lent to the project at 1% interest.

- Loans provided by the Affordable Housing Program of the Federal Home Loan Bank *are not* considered federal subsidies and can be claimed at the 9% Credit rate.

B. Types of Housing Projects

First and foremost, LIHTC eligible housing must be available for use by the general public. Even though projects can target special populations, such as the elderly or the homeless, they must not violate HUD's non-discrimination policies. To be eligible for LIHTC, housing must be suitable for occupancy and in compliance with local health, safety, and building codes. New construction must be handicapped accessible.

1. Eligible Housing Projects

The following projects are eligible for the LIHTC Program:

- Mixed-use buildings
- Transitional housing
- Single room occupancy
- Special needs housing
- Elderly housing
- Group homes
- Single-family rental properties
- Housing cooperatives
- Projects designed for future tenant ownership

There are several qualifications to the eligibility of the projects listed above:

Mixed-Use Buildings. Only low-income residential costs may be included in basis.

Special Needs Housing. Special needs projects may include assisted living facilities, as long as they do not provide daily medical and nursing services and all other services are optional (see below). In the case of group homes and Single Room Occupancy housing, each room is considered a separate housing unit.

Projects Providing Services. Projects providing services to tenants are eligible for LIHTC. Nevertheless, if payment for these services is mandatory, it must be included in gross rents. If payment is optional, there must be a *practical alternative* for obtaining the service to prevent its cost from being included in gross rents. For example, in an elderly housing project, common kitchen facilities that residents can use to prepare their own meals would be considered a *practical alternative* to having the meals provided by the

[2] Projects located in Difficult Development Areas or in qualified census tracts can claim up to a 30% increase in eligible basis. This concept is explained in more detail in Section 4.

staff. Therefore, an optional payment for meals would not be considered part of gross rents.

Housing Cooperatives. Housing cooperatives are also eligible to receive LIHTC. Nevertheless, since LIHTC eligible projects must be rental, the building must be leased from the owner by the cooperative. The project can be purchased by the cooperative at the end of the fifteen-year compliance period, but it must first be offered to potential buyers who would continue to use it as low-income rental housing.

Buildings with five or less rental units. Buildings with five or less rental units where one unit is occupied by the owner can be LIHTC eligible if rehabilitated under a development plan sponsored by a qualified nonprofit or a state or local government entity. Given that the owner occupies one of the units, only 80% of the building is eligible for LIHTC.

Projects designed for future tenant ownership. These projects are also LIHTC eligible, but the purchase of the units must occur after the fifteen-year compliance period. In this case, the monthly amount received toward the purchase of the unit must be counted against the maximum rents for the project.

2. Ineligible Housing Projects

The following projects are ineligible for the LIHTC Program:

- Dormitories
- Trailer parks
- Transient housing
- Nursing homes
- Student housing
- Projects receiving HUD Section 8 Moderate Rehabilitation Assistance

Exceptions

Transient housing. There are two exceptions regarding transient housing, which is defined as housing with a lease of less than six months. The first exception applies to *Single Room Occupancy (SRO)* projects. SRO projects are LIHTC eligible, as long as they rent the units for periods of a month or more. SRO's provide both temporary and permanent housing for formerly homeless persons. A characteristic of these projects is that they have shared bathroom and cooking facilities. The second exception applies to *transitional housing*, which is designed to help people transition into independent living within 24 months. In this case, each housing unit must have its own bathroom and cooking facilities, and services must be provided to the tenants. To be eligible, transitional housing projects must be operated by a government agency or a qualified nonprofit organization.

Housing for students. Generally, housing for students is not eligible for LIHTC. There are, however, several exceptions. Student-occupied apartments are eligible for LIHTC when any of the following applies:

1. Occupants are married students who file joint tax returns.

2. Occupants are single parents and recipients of Aid for Families with Dependent Children (AFDC), they are students, and have minor children. In this case, the occupants must not be claimed as dependents by a person outside the household.
3. Occupants are students enrolled in a job training program under the Job Training Partnership Act or a similar initiative.
4. Occupants are unmarried part-time students.

Section 8 Moderate Rehabilitation Assistance. An SRO project receiving Section 8 Moderate Rehabilitation Assistance is eligible for LIHTC, according to the McKinney Homeless Housing Assistance Act of 1988.

C. Type of Ownership

The typical form of ownership for LIHTC projects is a *limited partnership* (or a *limited liability company*). Limited partnerships are formed by general partners and limited partners. Typically, one or more *general partners own from one tenth of one percent (.1%) to one percent (1%)* of the partnership interest, and one or more *limited partners own 99% to 99.9%* of the partnership interest. The profits, losses, and tax benefits of LIHTC projects flow to the partners in proportion to their ownership interest in the limited partnership.

The *general partner* is usually the *sponsor* or developer of the project or an affiliate entity. The general partner is typically responsible for the development, construction, completion, and operation of the project. The *limited partner* is the *tax credit investor*, who acquires nearly all of the ownership without acquiring management control.

Under New York State Partnership Law, a *passive investor* may acquire an ownership interest in a real estate project through a limited partnership, without subjecting itself to all the obligations, responsibilities, and liabilities of direct ownership. Therefore, under the limited partnership structure, the investor limited partner (as the passive investor) gains certain of the economic and tax benefits of ownership, but is precluded from participating in the day-to-day management of the property.

The Limited Partnership Agreement (LP Agreement)

The *limited partnership agreement* is the document that defines and governs the business relationship between the general partner and the investor limited partner. The LP is formed by the general partner (usually the developer) and an affiliate under a simple “shell” limited partnership agreement. This structure is called a "shell" because it is formed without the investor limited partner. The sponsor's affiliate is admitted as the initial limited partner, and withdraws when the investor is admitted. This LP agreement is amended and restated upon the admission of the investor limited partner into the partnership. The amended agreement is an extensive agreement that:

- Defines and clarifies the parties’ roles
- States the obligations of the investor to make capital contributions

- Outlines the precedents and requirements for the investor's capital contributions and any formulas for their adjustment
- Lays out the warranties and guarantees made by the general partner to the investor limited partner
- Confirms certain federal tax elections and treatments the partnership will utilize

Option to Purchase at the End of the Recapture Period

A 501.c.3 nonprofit corporation may be granted an option to acquire the investor limited partner's partnership interest at the end of the initial compliance period (15 years). This is usually referred to as the *right of first refusal*. The cost of this acquisition for the nonprofit is defined by Section 42 of the Code and is equal to:

- The assumption of the remaining debt, and
- The investor's tax liability as a result of the sale.

D. Rent and Income Limitations

The incomes and gross rents paid by households residing in units financed with LIHTC must fall within specified maximum limits. These rent and income limits are issued annually by HUD. HUD's "very low-income" guidelines are equivalent to 50% of the Area Median Income, adjusted by family size. The 60% of AMI guidelines are also presented in the HUD income charts. If the income of the tenant or the rent charged do not meet these guidelines, the unit cannot be counted towards the eligible basis for the project. Income limits and maximum rents are included in Appendices A and B.

According to the LIHTC Program guidelines, housing project owners have the option of choosing between these two income targets or minimum set-asides for low-income occupancy:

- Either 40% of the project's units must be reserved for tenants at or below 60% of the AMI, *or*
- 20% of the units must be reserved for tenants at or below 50% of the AMI.

New York City is an exception to this rule. Due to the relatively higher costs and lower incomes, only 25% of the units must be set aside for tenants at or below 60% of AMI to qualify for LIHTC.

As a general rule, rents must not be higher than 30% of the maximum income targeted for the unit. The project owner must select an income target by the date the project is placed in service and available for occupancy. The chosen income target must be fulfilled by the end of the first year of the LIHTC period. Multi-building projects can comply with this income targeting requirement on a project basis, and do not have to fulfill it on a building by building basis.

Deep Rent Skewing

Deep Rent Skewing is used in affluent areas where very high rents can be charged in part of the project to "subsidize" very low-income tenants in the rest of the project. Under a deep rent skewing scenario, only 15% of the units must be set aside for tenants at or below 40% of the AMI. This scenario allows the income of a LIHTC tenant to increase up to 70% above the maximum level, without disqualifying the unit for LIHTC. The average rent for market rate tenants must be at least 200% of the rent for a similar size low-income unit.

Maximum Rents

Tenants residing in a LIHTC unit cannot pay more than the maximum rent established by program regulations. Maximum rents are established according to the unit size, as defined by the number of bedrooms. These rents must not exceed 30% of the maximum income for a household size of 1.5 persons per bedroom.[3] The initial maximum rent levels can be locked-in either when the tax credit allocation is made, or when the building is placed in service and ready for occupancy. To select the "lock-in" date, the owner must notify the Internal Revenue Service by the placed in service date. Otherwise, the IRS assumes by default that the allocation date was the date for determining the initial maximum rents. Initial maximum rents are important because they establish the rent floor for a project. In other words, project rents do not have to be reduced below the initial maximum rents.

Role of Utilities in Rent Calculation

Maximum rent levels correspond to gross rents, which include all utilities excluding telephone. If any utilities are paid by the tenant, the actual rent charged the tenant will be the maximum gross rent minus the utility allowance. Generally, the local Public Housing Authority's Section 8 Utility Allowance Schedule is used to determine utility allowances. If a project has HUD-established utility allowances, these would be used instead.

When the cost of utilities varies considerably from these standards, interested parties can petition a local utility company to provide estimates, which can be used in place of the utility allowances. Projects with lower utility costs can benefit from this procedure, as it will allow them to charge higher rents. The rents must be adjusted within 90 days of the issuance of the updated utility allowances. Similarly, estimates provided by local utility companies must be updated when rent levels are updated.

Maximum Rents for Section 8 Tenants

By law, project owners cannot discriminate against tenants holding a Section 8 certificate or voucher. Payments received by project owners from Section 8 or similar rental assistance programs are not counted against the maximum rent. However, HUD Section 8 rules limit total rental income for a Section 8 unit in a LIHTC project to the rent received for a comparable unit in the same project, which is not receiving Section 8 assistance.

[3] In the case of efficiency units, the household size is always one.

Calculating Rents in Special Needs Housing

In special needs housing projects, the payment for supportive services is not considered part of gross rents and therefore does not count toward the maximum allowable rents under the LIHTC Program, as long as payments come from a government program or a nonprofit organization.

Changes in Household Income after Initial Occupancy of a LIHTC Unit

Once the tenant is in the unit, household income can increase up to 40% above the maximum income level. If household income increases beyond that level, the next available unit of equal or smaller size must be rented to a qualified household to avoid loss of LIHTC, due to the need to maintain the claimed number of qualified low-income units. Nevertheless, even if a tenant's income increases, the rent collected on the unit cannot exceed the maximum rent requirements, unless the unit is no longer a LIHTC unit.

E. Long Term Use of Property

The initial compliance period for a project receiving an allocation of LIHTC is fifteen years. An *extended use agreement* extends the compliance period an additional fifteen years, for a total of thirty years. In New York State, even though the extended use agreement is not a statutory requirement, as a practical matter, most projects commit to thirty years of operation as low-income rental housing. Due to the intense competitiveness of the LIHTC environment, many sponsors commit themselves to forty or more years of compliance.

The extended use agreement must be recorded in the County land records by the end of the first tax credit year, to allow LIHTC to be claimed for that year (the Code does allow for some relief for late filings). Extended use agreements can be enforced in the courts, and both DHCR and individuals can file a lawsuit to prevent an owner from converting a building to market-rate occupancy prior to the end of the agreement.

Post-Compliance Period

Owners who wish to convert their property to market-rate use at the end of the fifteen-year compliance period must first put the property for sale to potential buyers who would maintain the low-income rental use. The property must be advertised at a formula price calculated as follows:

SALE PRICE = Percentage of Project Units that Qualified for LIHTC x (Remaining Debt + Initial Equity + Additional Capital Contributions - Cash Distributions)

The initial investor equity is inflated yearly by the percentage increase in the Consumer Price Index, up to 5% per year.

To convert the property after the fifteen-year period but before the end of the thirty years, the owner must give DHCR a one-year advance notice. This allows DHCR to look for a buyer willing to purchase the property at the formula price and continue its low-income rental use. If such a buyer is found, he or she must then comply with the LIHTC Program requirements for the remaining years of the extended low-income use agreement. If a buyer is not found, the owner can sell the property to any interested party, even if it will not be maintained as low-income rental housing.

Effect of Market-Rate Conversion on Low-Income Tenants

Once a building has been converted to market-rate use, low-income tenants cannot be evicted without cause and their rents must remain below the maximum LIHTC rents for an additional three years. This three-year period starts after the end of the one-year period used by DHCR to seek a buyer for the property. Thus, a converted building's market-rate occupancy would begin by attrition and vacancy, sometimes years after its actual conversion.

A foreclosure legally terminates the low-income extended use period, unless the foreclosure is being used precisely for that purpose. The same three-year grace period for low-income occupants applies in the case of foreclosure. Projects structured for future tenant ownership must also offer the property for sale for continued low-income rental use before the tenants can actually buy it. The only exception to this rule is made for single-family homes, in order to allow for homeownership programs.

Through a *right of first refusal*, a qualified 501.c.3 tax-exempt organization can establish a fixed price in advance, to buy back the property at the end of the fifteen-year compliance period. The price must be at least equal to the project's outstanding debt and the taxes originated by the transaction. This is a common alternative in projects owned by limited partnerships, where the nonprofit housing provider buys out the equity investor at the end of the fifteen-year compliance period and maintains the project's low-income rental use.

4. HOW LOW-INCOME HOUSING TAX CREDITS WORK

A. Allocation Process [4]

According to the Tax Reform Act of 1986, each state must designate a state agency as the lead Housing Credit Agency responsible for the allocation of LIHTC throughout the state. In New York, DHCR was designated as the lead Housing Credit Agency by Executive Order, with the authority to sub-allocate LIHTC to other state and local agencies concerned with housing. As per Section 42 of the Code, each Housing Credit Agency must adopt a Qualified Allocation Plan (QAP), explaining the criteria and preferences for allocating LIHTC. As part of the regulations, 10% of the state credit ceiling must be allocated to nonprofit organizations.

1. Applying for LIHTC

DHCR allocates LIHTC through annual funding rounds. Each year, DHCR issues a Notice of Funding Availability (NOFA) and requests proposals for the Unified Funding Round. By submitting an application for LIHTC, organizations can also request funds from the Housing Trust Fund or HOME programs. Application materials, requests for proposals, and copies of the QAP can be obtained by contacting the regional offices listed in Appendix C.

Applications submitted by the specified deadline are reviewed according to the following criteria:

- Completeness
- Program eligibility
- Threshold eligibility
- Selection criteria
- Project feasibility
- Consistency with DHCR's underwriting standards

2. Threshold Eligibility Review

In order to be scored and ranked, applications must first pass the Threshold Eligibility Review, which outlines sixteen minimum project requirements related to:

- Compliance with IRC Section 42
- Site control and local approvals
- Consistency with local Consolidated Plan
- Previous development and management experience
- Market demand

[4] This section was taken from DHCR's Qualified Allocation Plan.

- Amount of LIHTC requested

3. Scoring

Once applications have passed this initial review, they are scored according to the following criteria:

Housing Needs	20 points
Efficiency of Credit Use	20 points
Affordability/Marketing	10 points
Regulatory Period	10 points
Project Readiness	10 points
Marketing Plan/Public Assistance	10 points
Participation of Local Tax-exempt Organizations	5 points
Special Needs	5 points
Tenant Buy-Out Plan	5 points
Sponsor Characteristics	5 points

4. Selection

Projects with the highest scores receive a *credit reservation*. Credit reservations contain deadlines for various development milestones, such as securing commitments for permanent financing, closing on construction financing, obtaining all local approvals, and commencing construction. If the applicant meets these milestones and expends more than 10% of the reasonably expected basis on the project, DHCR can issue a *carryover allocation* (see part D in this section). A carryover allocation gives the owner until the close of the second calendar year following the year of the carryover allocation to place the project in service.

Applications that meet the Threshold Eligibility Review and attain a certain minimum score, but are not selected for a credit reservation, are placed on a waiting list. Such projects can receive a credit reservation if DHCR receives credits from a national pool, expired credit reservations or binding agreements, or recaptured credits. The waiting list is valid only until the next funding round, after which a new waiting list is created.

B. Determining the Amount of LIHTC

To determine the amount of LIHTC that a project is eligible to receive, it is first necessary to determine which expenses are *eligible* to be included in *basis* and which are not. *Basis* is the name given to the total eligible project costs on which the calculation of the LIHTC amount is based.

1. Eligible Costs

To be eligible, expenses must be subject to depreciation. Rehabilitation and construction costs charged to the capital account for depreciation purposes, construction period interests, and construction-related soft costs are generally eligible to be included in basis. Table 1 illustrates eligible line items.

Table 1. Eligible and Ineligible Expenses for LIHTC Purposes

Eligible Costs	Ineligible Costs
+ Appraisal	– Capitalization of operating reserves
+ Architectural and engineering fees	– Cost of issuance and other bond-related expenses
+ Bond premium	– Credit enhancement fees
+ Builder's overhead	– Debt service reserve
+ Builder's profit	– Demolition to make land available
+ Building acquisition and related costs	– Land acquisition and related costs
+ Closing costs	– Non-residential hard costs (such as commercial space in mixed-use buildings)
+ Construction contingency	– Organizational costs
+ Cost certification audit	– Replacement reserve
+ Developer's fee	– Syndication fees
+ Fees and permits	– Working capital (except furnishings and equipment)
+ Furnishings and equipment	
+ General requirements	
+ Housing consultant	
+ Inspecting engineer	
+ Insurance	
+ Interim interest	
+ Legal fees	
+ LIHTC reservation fee	
+ Market study	
+ Phase I environmental study	
+ Residential hard costs	
+ Soil borings	
+ Survey	
+ Taxes	
+ Title and recording	

Eligible Amenities

Amenities, such as parking, common areas, pools, employee apartments and management offices, are eligible for LIHTC if they are related to housing and available to all tenants without the need to pay additional fees. Transitional housing projects can include in basis the space used for providing services, up to an additional 20% over the cost of residential expenditures for rental space, even if the services are provided to non-residents. Developer fees are generally eligible for LIHTC, and the cost of demolishing part of a building for rehabilitation purposes is also included in basis.

Given that federal grants and subsidies cannot be claimed in basis, money provided by these sources should be used towards the expenses that cannot be claimed in basis themselves, or that are claimed at the lower 4% Credit rate. Grants can be structured as soft loans with 1% interest payable only from cash flow, allowing funds to be claimed in basis, while providing the most favorable terms possible. However, if the grant involves HOME funds in a 30% bonus area, the money has to be lent at the Applicable Federal Rate and can no longer pay only 1% interest.

2. Determining the Developer's Fee

DHCR's guidelines establish a maximum developer's fee equal to 10% of the acquisition and improvement costs of the LIHTC qualified units. An increase in the developer's fee up to 15% of the improvement costs may be earned in cases where the developer provides guarantees, including a three-year or greater operating deficit guarantee. The NYS Housing Finance Agency limits the developer's fee to a maximum of 10% of these cost items.

3. Determining the LIHTC Amount

The annual LIHTC amount is equal to the Credit rate multiplied by the qualified basis. The qualified basis is equal to the eligible basis (total eligible costs) multiplied by the applicable fraction, which is the *lesser* of a) the percentage of units which are low-income *or* b) the percentage of project residential rental space which is used for low-income units. The Credit rate is the applicable 4% or 9% Credit rate, as published monthly by the Internal Revenue Service. Worksheet 1 shows the step-by-step process of calculating the annual LIHTC amount. (For a detailed calculation, please see *Example A: Determining the Tax Credit Amount*, included on page 21.)

A project's eligible basis attributable to improvements can be increased by up to 30% if it is located in a qualified census tract or a Difficult Development Area (see discussion under 30% Bonus below). Both the eligible basis and the applicable fraction are locked-in the last day of the first year of the tax credit period.

WORKSHEET 1: CALCULATING THE LIHTC AMOUNT

1. Is the proposed project eligible for LIHTC?

A. What kind of project is it?

____ New construction
____ Acquisition + Rehabilitation
____ Rehabilitation

B. Do the project's future tenants fall within the income thresholds set by the IRS?

____ 20% of units must be set aside for tenants whose household incomes are at or below 50% of the Area Median Income
____ 40% of the units must be set aside for tenants whose household incomes are at or below 60% of the Area Median Income

2. What is the applicable nominal Credit rate for the proposed project?

A. Are there federal sources of funding?

____ Yes. Applicable rate is 4%
____ No. *Go to next question*.

B. Select type of project

_____ New construction (9%)
_____ Rehabilitation (9%)
_____ Acquisition (4%)
_____ Historic Preservation Project (9% on rehab and 4% on acquisition) (*see Worksheet #2 on page 27 for calculation of HPTC amount*)

3. What costs are eligible for the project's "qualified basis?"

A. Itemize the eligible and ineligible costs *(see Table 1 on page 17)*
B. Add eligible costs. Enter total amount here $___________
C. Is project in a Difficult Development Area or qualified census tract?

_____ Yes. Add 30% to project's qualified basis. (Qualified basis $_______ x 30% = ________).

_____ No.

D. Total eligible basis: $_________ (*Add lines B and C)*

4. Determine the specific tax credit rate

A. Determine date for locking-in rates

______ Month when DHCR enters into binding agreement or carryover allocation to provide tax credits, *or*

______ Month when building is placed in service

B. Determine Credit rate published by IRS for month chosen _____%

5. Determine annual amount of tax credits the project will receive.

Total qualified basis ($_________) x tax credit rate (______%) = ___________

6. Determine total amount of tax credits the project will receive over 10 years.

Annual tax credit amount ______ x 10 = ____________

7. Determine equity contribution (dollar value of tax credits) the project will receive from the investor.

10 year tax credit amount (______) x price of tax credit dollar $______ = ______

EXAMPLE A: DETERMINING THE TAX CREDIT AMOUNT

This is a 48-unit senior housing project with a total project cost of $3,986,902. The project involves the acquisition of land and the construction of a new facility. Permanent funding will be provided by tax credit equity in the amount of $2,255,736 and a soft loan of $1,731,166 from the Housing Trust Fund Corporation. Construction will be financed through a conventional construction loan and approximately a third of the tax credit equity. As it is structured, the project can support rents starting at $224 a month for a one-bedroom and $325 for a two-bedroom (including heat and hot water), serving income levels as low as 30% of the AMI for the Capital District Region.

The information needed to calculate the LIHTC amount comes directly from the project's Development Budget. Since this project is not receiving federal funding and it is new construction, it is eligible for the 9% credit. Therefore, all LIHTC eligible expenses are taken at the corresponding Credit rate of 8.2% (assuming this is the current 9% rate). For this type of project, the price of the Credit dollar is currently around 75 cents, which is the price we used to calculate the Tax Credit Equity raised by the project (line 52).

It is worth noting the following about this example:

- *The cost of land is not included in basis because it is not depreciable.*
- *Not all construction interest is included in basis, because part of the interest on the construction loan is paid once the construction period has ended. 75% of total construction period interest is usually taken as the standard.*
- *Working capital items, with the exception of furnishings (included in line 45) and reserves, are not included in basis as they are not LIHTC eligible expenses.*
- *If this project were located in a low-income census tract or DDA, total basis would be 1.3 times what is shown here as Total Basis at 9% (line 46), due to the 30% bonus.*
- *If the project included building acquisition costs, these would be claimed at 4%, and would constitute the Total Basis at 4%. Multiplying by the nominal 4% rate, we would obtain the Annual LIHTC Amount at 4%. This annual amount would be added to the Annual Amount at 9% (line 48) to obtain the Total Annual LIHTC Amount (line 50).*

EXAMPLE A: DETERMINING THE TAX CREDIT AMOUNT

	TOTAL COST	LIHTC BASIS AT 9%
ACQUISITION		
1. LAND	$200,000	
2. STRUCTURES	$0	
3. TOTAL ACQUISITION	**$200,000**	
SOFT COSTS		
4. APPRAISAL	$1,500	$1,500
5. HOUSING CONSULTANT	$20,000	$20,000
6. SURVEY	$7,000	$7,000
7. INSPECTING ENGINEER	$0	$0
8. PHASE I ENVIRONMENTAL	$1,500	$1,500
9. ARCHITECTURE/ENGINEERING	$132,450	$132,450
10. LIHTC APPLICATION AND RESERVATION FEE	$0	$0
11. LEGAL: OWNER'S COUNSEL	$40,000	$40,000
12. LEGAL: BANK'S COUNSEL	$0	$0
13. COST CERTIFICATION AUDIT	$6,000	$6,000
14. INSURANCE	$7,000	$7,000
15. TAXES	$3,500	$3,500
16. INTERIM INTEREST	$146,760	$110,070
17. CLOSING COSTS	$36,000	$36,000
18. TITLE AND RECORDING	$21,400	$21,400
19. OTHER: LIHC RESERVATION FEE	$9,820	$9,820
20. OTHER: CREDIT ENHANCEMENT FEES	$0	$0
21. OTHER: IMPACT FEE	$0	$0
22. OTHER: COST OF ISSUANCE	$0	$0
23. OTHER: SOIL BORINGS	$3,000	$3,000
24. TOTAL SOFT COSTS	**$435,930**	**$399,240**
CONSTRUCTION		
25. SITE WORK	$238,500	$238,500
26. PAVING AND CURBING	$0	$0
27. DEMOLITION	$50,000	$50,000
28. ASBESTOS REMOVAL	$0	$0
29. OTHER		
30. SUBTOTAL SITE PREPARATION	**$288,500**	**$288,500**
31. RESIDENTIAL	$2,086,150	$2,086,150
32. COMMUNITY		
33. COMMERCIAL	$0	$0
34. GENERAL REQUIREMENTS	$230,000	$230,000
35. BUILDER'S OVERHEAD	$52,000	$52,000
36. BOND PREMIUM	$0	$0
37. OTHER FEES/PERMITS	$0	$0
38. OTHER (SPECIFY)	$0	$0
39. SUBTOTAL CONTRACTOR'S COST	**$2,656,650**	**$2,656,650**
40. BUILDER'S PROFIT	$182,350	$182,350
41. TOTAL CONSTRUCTION	**$2,839,000**	**$2,839,000**
42. CONSTRUCTION CONTINGENCY	$50,000	$50,000
43. DEVELOPER'S FEE (FROM LIHC)	$352,493	$352,493
44. TOTAL DEVELOPMENT COSTS	**$3,877,423**	**$3,640,733**

45. FURNISHINGS	$27,130
46. TOTAL BASIS AT 9%	$3,667,863
Multiplying total basis by the tax credit rate (8.2%):	
48. ANNUAL LIHTC AMOUNT AT 9% (8.2%)	**$300,765**
Since there are no 4% credits, line 48 is equal to the total annual amount of tax credits	
50. TOTAL ANNUAL LIHTC AMOUNT	**$300,765**
The ten year amount is the total annual amount multiplied by ten	
51. TEN YEAR LIHTC AMOUNT	**$3,007,648**
We obtain the tax credit equity by multiplying by the price of the tax credit dollar, in this case 75 cents	
52. TAX CREDIT EQUITY	**2,255,736**

4. Determining the Credit Rate

The 4% and 9% Credit rates are nominal rates, and are not actually used in the LIHTC calculation. The actual Credit rates fluctuate monthly and are set and published by the IRS every month. These rates are available through the DHCR Regional Offices and can also be found in the Federal Register. To establish the applicable Credit rate, the project developer may choose between 1) the Credit rate for the month when DHCR (the Housing Credit Agency) enters into a binding agreement or carryover allocation to provide LIHTC, or 2) the rate for the month when the building is placed in service. The advantage of locking-in the Credit rate earlier, at the time of a binding agreement, is that it provides more certainty as to the amount of LIHTC the project will earn. Nevertheless, if interest rates are expected to go up, it would make sense to wait and accept the Credit rate in effect when the building is placed in service, since the Credit rate trends with interest rates.

5. Determining the Equity Contribution

The late 1990s have shown investors paying between $0.70 and $0.80 per LIHTC dollar, depending on the pay-in schedule and other characteristics of the LIHTC deal. In the case of Historic Preservation Tax Credits, investors usually pay $0.90 per tax credit dollar. This is because Historic Preservation Credits are claimed sooner and have a shorter recapture period, thereby significantly increasing their present value and reducing the risk to the investor.

The LIHTC equity for a project is equal to the ten-year LIHTC amount multiplied by the price of the Credit dollar. For instance, if the 10-year LIHTC amount is $400,000 and the price of the Credit dollar is $.70, then the total LIHTC equity received by the project will be $280,000. The following formula shows how to determine the dollar value of LIHTC equity a project developer will receive from an investor:

LIHTC Equity = 10-Year LIHTC Amount x Price of LIHTC Dollar

If the project includes both LIHTC and Historic Preservation Tax Credits, the total equity contribution will be the Historic Tax Credit amount multiplied by the price of the Historic Tax Credit dollar, plus the ten-year LIHTC amount multiplied by the price of the LIHTC dollar, as shown in the formula below (please see Example B on page 29 for more detail).

Total Equity = 10-Year LIHTC Amount x Price of LIHTC Dollar + HPTC amount x Price of HPTC dollar

6. 30% Bonus

Projects located in Difficult Development Areas (DDA) or in qualified census tracts are eligible for up to a 30% increase in eligible basis. DDA's are areas where housing costs are high relative to the prevailing income levels. Qualified census tracts are those where

50% or more households have incomes below 60% of the AMI.[5] As an exception, projects with HOME-subsidized loans that elect to use the 9% Credit rate must forego the 30% bonus, unless the loan uses an interest rate at the Applicable Federal Rate (AFR).

7. Determining the Placed in Service Date

The placed in service date is the date when the building is ready and available for occupancy. Usually, the placed in service date is equated to the date a Certificate of Occupancy is issued. This date is important because it determines when the investor can start claiming the LIHTC.

Because the LIHTC is allocated by building, multi-building projects must keep track of LIHTC on a building-by-building basis. Each postal address is a separate LIHTC allocation (utilizing a separate allocation document, IRS Form 8609), thereby allowing owners to start claiming LIHTC on different dates depending on when each building is placed in service.

8. Determining the First Year of the Tax Credit Period

The owner can elect to start claiming LIHTC the year the building is placed in service, or the following year. This choice will determine the first year of the tax credit period. By default, the IRS assumes that LIHTC will be claimed starting the year after the building is placed in service. To choose otherwise, the owner must indicate his selection in IRS Form 8609. By the end of the initial tax credit year, all eligible basis expenses must have been incurred and at least 40% of the units must be occupied by tenants at 60% of the AMI, *or* 20% by tenants at 50% (depending on the owner's choice), to avoid a reduction in the amount of LIHTC. Expenses made after the initial tax credit year can no longer be claimed as basis.

If a building's low-income units are not fully occupied throughout the first year that LIHTC are claimed, the annual LIHTC amount must be adjusted by the average low-income occupancy for the year. The balance of the annual LIHTC amount can then be claimed in the eleventh year. Early project expenses and expenditures incurred through the end of the first tax credit year can be included in basis, even if they were incurred after the building was placed in service.

[5] The list of DDA's is published annually by the U.S. Department of Housing and Urban Development. The list of qualified census tracts is updated every 10 years, as information from the Census becomes available. Current lists of DDA's and qualified census tracts for the State of New York are attached in Appendices D and E.

C. Determining the Amount of LIHTC when Historic Credits are Involved

The Historic Preservation Tax Credit is calculated similarly to the LIHTC. As explained earlier, the main difference is that the Historic Preservation Tax Credit is a one-time amount calculated as 20% of the eligible basis. Nevertheless, the following expenses are not eligible under the HPTC:

- Acquisition costs
- Site work
- Furnishings

Once the Historic Preservation Tax Credit has been calculated, this amount must be subtracted from the total basis for LIHTC to obtain the eligible basis. Example B explains how to calculate the Historic Preservation Tax Credit, and how to calculate the LIHTC when historic credits are involved. Worksheet 2 shows the step-by-step process of calculating the HPTC amount and the LIHTC amount in a project that uses both types of tax credits.

WORKSHEET 2: CALCULATING HOUSING PRESERVATION TAX CREDIT (HPTC) AND LIHTC AMOUNTS

1. Is the proposed project part of a historic district or individually listed in the National Register of Historic Places?

____ Yes. *Go to next question.*
____ No. The project does not qualify for HPTC.

2. Have the NYSHPO and the U.S Department of the Interior determined that:

A. The structure has historic significance?

____ Yes. *Go to next question*.
____ No. You must query the SHPO to this respect.

B. The proposed rehabilitation meets the federal standards for the rehabilitation of historic structures?

_____ Yes. *Go to next question.*
_____ No. You must submit rehabilitation plans for review.

3. What costs are eligible for the project's historic preservation basis?

A. Itemize the eligible and ineligible costs *(see Table 1 on page 17)*
B. Add eligible costs, with the exception of site work and furnishings. Enter total amount here $___________

4. Determine the historic preservation tax credit amount.

Total basis ($_________) x 20% = ___________

5. Determine equity contribution for HPTC.

HPTC amount (______) x price of HPTC dollar $_____ = ______

6. What costs are eligible for the project's LIHTC basis?

A. Itemize the eligible and ineligible costs *(see Table 1 on page 17)*
B. Add eligible costs. Enter total amount here $___________
C. Is project in a Difficult Development Area or qualified census tract?

____ Yes. Add 30% to project's qualified basis.
(Qualified basis $_______ x 30% = __________)

____ No.

D. Total basis for LIHTC: $_______ *(Add lines B and C)*
E. Subtract HPTC amount to determine LIHTC eligible basis:
LIHTC eligible basis = ________ *(Subtract line 4 from line 6D)*

7. Determine the specific tax credit rate.

A. Determine date for locking-in rates

____ Month when DHCR enters into binding agreement or carryover allocation to provide tax credits

____ Month when building is placed in service

B. Determine Credit rate published by IRS for month chosen _____%

8. Determine annual amount of tax credits the project will receive.

Total basis ($_________) x tax credit rate (________%) = ___________

9. Determine total amount of tax credits the project will receive over 10 years.

Annual tax credit amount ______ x 10 = ____________

10. Determine LIHTC equity contribution the project will receive from the investor.

10 year tax credit amount (______) x price of tax credit dollar $___ = ______

11. Determine total equity contribution the project will receive from both HPTC and LIHTC. *(Add lines 5 and 10)*

EXAMPLE B: LIHTC AND HISTORIC PRESERVATION CREDITS

This is a 45-unit senior housing project with a total project cost of $5,023,839. The project involves the rehabilitation of a building that forms part of a National Historic District, and is therefore eligible for Historic Preservation Tax Credits. Since the project will provide low-income housing for seniors, it is also eligible for the Low-Income Housing Tax Credit.

Permanent funding will be provided by LIHTC equity in the amount of $2,388,525, HPTC equity in the amount of $835,314, a soft loan of $1,600,000 from the Housing Trust Fund Corporation, and a soft loan of $200,000 from the Federal Home Loan Bank. Construction will be financed through a conventional construction loan and approximately 60% of the LIHTC and HPTC equity.

Since the project is not receiving federal funding and it involves substantial rehabilitation, it is eligible for the 9% Credit. Therefore, all LIHTC eligible expenses are taken at the corresponding Credit rate of 8.2% (assuming this is the current 9% rate). For this type of project, the price of the Credit dollar is currently around 75 cents, which is the price we used to calculate the LIHTC Equity raised by the project (line 50). The price of the HPTC dollar is around 90 cents, which is the price we used to calculate the HPTC Equity (line 45).

It is worth noting the following about this example:

- *The building is not eligible for 4% acquisition credits because it does not comply with the ten-year previous ownership rule.*
- *The first year that the building is placed in service, the owner will be able to claim the full Historic Tax Credit amount, as well as the annual LIHTC amount. The following nine years, the owner will only claim the LIHTC amount, given that the Historic Tax Credit is claimed in full during the first year.*

EXAMPLE B: LIHTC AND HISTORIC PRESERVATION CREDITS

		TOTAL PROJECT COST	HISTORIC PRESERVATION BASIS	LIHC BASIS 9%
	ACQUISITION			
1.	LAND	$1	$0	$0
2.	STRUCTURES	$1	$0	$0
3.	**TOTAL ACQUISITION**	**$2**	**$0**	**$0**
	SOFT COSTS			
4.	APPRAISAL	$1,500	$1,500	$1,500
5.	HISTORIC PRESERVATION CONSULTANT	$8,000	$8,000	$8,000
6.	SURVEY	$4,750	$4,750	$4,750
7.	CONSTRUCTION LENDER ENGINEER INSPECTION	$7,000	$7,000	$7,000
8.	PHASE ONE ENVIRONMENTAL	$4,980	$4,980	$4,980
9.	ARCHITECTURE/ENG.	$170,000	$170,000	$170,000
10.	LIHTC RESERVATION FEE	$9,850	$9,850	$9,850
11.	LEGAL: OWNER'S COUNSEL	$35,000	$35,000	$35,000
12.	LEGAL: BANKS' COUNSEL	$5,000	$5,000	$5,000
13.	COST CERT. AUDIT	$6,000	$6,000	$6,000
14.	INSURANCE	$7,200	$7,200	$7,200
15.	TAXES	$3,500	$3,500	$3,500
16.	INTERIM INTEREST	$172,450	$172,450	$172,450
17.	CONSTRUCTION LENDER'S FEE:	$36,000	$36,000	$36,000
18.	TITLE AND RECORDING	$20,341	$20,341	$20,341
19.	HOUSING MARKET STUDY	$4,500	$4,500	$4,500
20.	OTHER: MISC. HOLDING COSTS	$12,500	$12,500	$12,500
21.	**TOTAL SOFT COSTS**	**$508,571**	**$508,571**	**$508,571**
	CONSTRUCTION			
22.	SITE WORK	$95,000	$0	$95,000
23.	PAVING	$27,000	$0	$27,000
24.	CURBS AND SIDEWALKS	$24,471	$0	$24,471
25.	DEMOLITION		$0	$0
26.	LANDSCAPING	$15,000	$0	$15,000
27.	**SUBTOTAL SITE PREPARATION**	**$161,471**	**$0**	**$161,471**
28.	RESIDENTIAL	$2,730,000	$2,730,000	$2,730,000
29.	DEMOLITION	$102,650	$102,650	$102,650
30.	COMMERCIAL		$0	$0
31.	GENERAL REQUIREMENTS	$144,574	$144,574	$144,574
32.	BUILDER'S OVERHEAD	$60,721	$60,721	$60,721
33.	BOND PREMIUM	$30,000	$30,000	$30,000
34.	OTHER FEES/PERMITS	$12,000	$12,000	$12,000
35.	OTHER (SPECIFY)		$0	$0
36.	**SUBTOTAL CONTRACTOR'S COST**	**$3,241,416**	**$3,079,944**	**$3,241,415**
37.	BUILDER'S PROFIT	$226,899	$226,899	$226,899
38.	**TOTAL CONSTRUCTION COST**	**$3,468,315**	**$3,306,844**	**$3,468,315**
39.	CONSTRUCTION CONTINGENCY	$198,860	$198,860	$198,860
40.	DEVELOPER'S FEE	$626,362	$626,362	$626,362
41.	**TOTAL DEVELOPMENT COSTS**	**$4,802,110**	**$4,640,636**	**$4,802,107**

42. FURNISHINGS	$22,500	$0	$9,800
43. TOTAL BASIS FOR HISTORIC PRESERVATION		**$4,640,636**	
Multiplying the Total Basis for Historic Preservation by 20%:			
44. HISTORIC PRESERVATION TAX CREDIT		**$928,127**	
Multiplying by the price of the historic preservation tax credit dollar, in this case 90 cents:			
45. HISTORIC PRESERVATION TAX CREDIT EQUITY		**$835,314**	
46. TOTAL BASIS FOR LIHTC			**$4,811,907**
The LIHTC Eligible Basis is equal to the Total Basis for LIHTC minus the Historic Tax Credit:			
47. LIHTC ELIGIBLE BASIS			**$3,883,780**
Multiplying the Eligible Basis by the tax credit rate (8.2%):			
48. ANNUAL LIHTC AMOUNT AT 9% (8.2%)			**$318,470**
The ten year amount is the Annual Amount multiplied by ten			
49. TEN YEAR LIHTC AMOUNT			**$3,184,699**
We obtain the tax credit equity by multiplying by the price of the tax credit dollar, in this case 75 cents			
50. LIHTC EQUITY			**$2,388,525**
We add the Historic Preservation Equity and the LIHTC Equity to obtain the total equity contribution:			
51. TOTAL EQUITY			**$3,223,839**

D. Earning a LIHTC Carryover

Low-Income Housing Tax Credits are allocated to projects by DHCR throughout the year. Nevertheless, projects often cannot be completed and placed in service the year they receive the allocation. Therefore, Section 42(h)(1)(E) allows taxpayers to *carryover* credits allocated in a specific year and claim them in subsequent years. In order to earn a *carryover allocation*, the taxpayer must incur costs greater than 10% of the reasonably expected basis in the project before the end of the year in which the carryover allocation is issued. Projects granted a *carryover allocation* have two years from the close of the calendar year in which the allocation was made to complete the project.

In New York State, owners must certify the following to DHCR, in order to earn the carryover allocation:

1. The owner's attorney, on a form proscribed by DHCR, must certify that the owner has site control, consistent with the Code, for the real estate in the project.
2. The owner's accountant must certify, on a form proscribed by DHCR, that prior to the carryover date, costs greater than 10% of the reasonably expected basis in the project have been incurred.

Land acquisition costs can be included in meeting the "10% test," even though the cost of land is not included in basis. Architectural, engineering, legal, surveying and appraisal costs are typically incurred early in the project development process and can be counted towards the "10% test." It is necessary to keep in mind that costs cannot be counted as incurred unless:

- The service (for example, partial architectural plans) has been delivered,
- An invoice has been rendered, and
- A contract for the provision of services is in place.

Costs incurred do not need to have been paid to count towards the 10% test. Nevertheless, they must represent a legitimate obligation on the part of the owner for services rendered. It is worthwhile to form the ownership entity, typically a limited partnership, early in the process, in order to enter contracts for professional services, land acquisition and financing in the name of the partnership. Since the limited partnership will be the entity claiming the carryover allocation, title to the land and all the costs incurred must be in the name of the limited partnership and not of the sponsor or general partner.

The "10% test" is a must. Failure to meet the test, even by a small margin, means a total loss of credits represented by the carryover allocation. Therefore, it is worthwhile to secure professional advice from an attorney and an accountant early in the process. Projects financed with tax-exempt bonds are not required to meet the carryover allocation requirements.

E. Economic Benefits of Using LIHTC for Affordable Housing Development

The LIHTC Program has proven highly successful in producing low-income housing units. The competition for LIHTC is such that, over the years, applications received by Housing Credit Agencies in New York State have requested three to seven times the annual amount of LIHTC the State has authority to allocate. Similarly, investors interested in LIHTC are competing amongst themselves to buy them, pushing the price of the Credit dollar upwards. Competition has been fueled by banks and financial institutions, which must comply with the requirements of the Community Reinvestment Act.

1. Tax Credits Enhance Affordability

Housing projects that use LIHTC are able to make apartments affordable at lower rents. When projects are financed with debt instead of LIHTC, the need for debt service coverage forces higher rents on the project. In the case of Example A, if the sponsor had wanted to use a combination of HTF and bonds, the bonds would have raised the rents enough to disqualify the project from the HTF. If the sponsor had wanted to finance the project only with HTF money, the HTF cost per unit would have gone up so much that the project would no longer have been competitive in its HTF application.

2. Tax Credits Allow Higher Developer's Fees

The LIHTC Program is the funding option that allows the highest developer's fees. By allowing higher levels of developer fees, the LIHTC Program allows developers to put some of their fees back into the project to provide additional funding. These funds can help subsidize rents, provide services to tenants, or compensate for the monitoring and reporting burden that the program imposes on the sponsor. Developer fees for projects funded with LIHTC usually range from $8,000 to $10,000 per unit. Conversely, developer fees for projects funded solely by grants under the Housing Trust Fund Corporation are limited to $1,800 per unit. Some funding sources do not allow sponsors the opportunity of earning developer's fees.

3. Costs of Utilizing Tax Credits

Due to the complexity of LIHTC financing, as well as the rigorous reporting and monitoring requirements established by the IRS, organizations using LIHTC financing should expect to incur additional costs throughout the life of a LIHTC project. Specific costs include:

Start-Up Costs	Management Costs
▪ Allocation fee ▪ Legal fees ▪ Market study ▪ Organizational costs ▪ Syndication costs	▪ Annual income certifications ▪ Annual audit ▪ Costs of reporting to limited partner ▪ Monitoring fee to DHCR

Most nonprofit organizations should utilize the services of qualified tax credit and legal consultants, who can handle the complex calculations, negotiations, and organizational requirements of a LIHTC project. Once a project is in operation, the developer should expect considerable administrative expenses involving ongoing monitoring and detailed reporting requirements (see Section 5 for more details). It is also a good idea to consider the scale of the proposed project: smaller projects are not necessarily good candidates for LIHTC financing because of the heavy start-up, administrative, and monitoring costs. Large-scale projects are better suited for LIHTC financing.

Despite the time, effort, and money involved in using LIHTC, there is virtually no other funding source available at this time that enhances affordability in low-income housing projects as much as the LIHTC Program does. As to the technical assistance needs, there are state and national organizations that provide funding for nonprofits to hire a technical assistance consultant and attend training conferences. Certain LIHTC fees (e.g. application and reservation fees) can be deferred by DHCR for nonprofit project developers. Moreover, other types of housing finance tools have their own inherent costs. For instance, projects financed with tax-exempt bonds incur costs of issuance and credit enhancement fees. In the end, the optimal financing mix will depend upon the specific project, the organization sponsoring it, and the resources available.

E. Players, Roles and Responsibilities

1. Sponsor

Project sponsors can be 501.c.3 nonprofit organizations or for-profit developers. Sponsors usually sell their project's LIHTC to investors, since nonprofit sponsors have no tax liability and thus cannot claim LIHTC, and for-profit sponsors are limited in their ability to claim LIHTC by passive loss limitations and alternate minimum tax requirements.

In the typical ownership structure, the limited partnership, the sponsor or an affiliate entity becomes the general partner. As the general partner, the sponsor is directly responsible for the development and construction of the project, as well as for its daily management and operation.

2. Investor

Investors play a crucial role in the LIHTC Program, as they are the ones that buy the LIHTC, providing a substantial portion of the overall project funding. Given that LIHTC can only be claimed by the owner of a low-income housing project, investors must be admitted into the ownership structure as part of the transaction.

Under the typical ownership structure, the investor becomes the limited partner and does not get involved in the daily management of the project, even though he or she typically acquires up to 99.9% of the partnership interest. Most likely, the investor will be a "C" corporation, which is not limited in the amount of LIHTC it can claim by passive loss limitations. Syndicators, institutional lenders, and insurance companies are the most common investor limited partners.

The main responsibility of the investor is to pay money into the project as stipulated in the limited partnership agreement. As a derived responsibility, the investor has to monitor the project's LIHTC compliance requirements, as it is the investor who suffers a recapture of the LIHTC in the event of non-compliance.

3. Tax Attorney

Both the sponsor and the investor need to engage a tax attorney. The role of the tax attorney is to verify that all aspects of the transaction comply with relevant regulations, and that the structure of the transaction is favorable to the client's interests. The tax attorney generally reviews not only the ownership agreement, but also loan documents and agreements between the sponsor and DHCR. The investor limited partner will rely on the opinion of the tax attorney that all aspects of the transaction comply with the requirements of Section 42 of the Internal Revenue Code.

4. Tax Credit Consultant

The tax credit consultant is usually hired by the project sponsor. The role and responsibilities of the tax credit consultant vary substantially depending on the needs, experience, and interests of the client. Generally, tax credit consultants prepare funding applications, negotiate agreements with equity investors and DHCR, advise the sponsor on different topics, such as ownership structure, investor selection, and equity pay-in schedules, and provide syndication and monitoring services.

5. TAX CREDIT COMPLIANCE

A. Regulatory Agreement

DHCR requires project owners to execute a regulatory agreement, which is recorded as a restrictive covenant that runs with the land. Exhibit "E" of such agreement details the operating and replacement reserves which must be established for the project. Exhibit "D" contains the "Availability Plan," which specifies project rents and the estimated cost of utilities for the tenants, and must be attached to the lease of each tax credit unit. A copy of the regulatory agreement must be provided, free of charge, to anybody who requests one.

The regulatory agreement specifies the compliance requirements for the low-income portion of the project. These requirements deal mainly with the following issues:

- Compliance with DHCR's and federal regulations regarding tax credit projects
- Disclosure of restricted rents
- Tenant income certifications
- Addressing code violations
- Maintenance of the applicable fraction
- Annual certifications provided to DHCR
- Extended use provisions

B. Tax Credit Compliance

In order to prove compliance with all the requirements of the LIHTC program, the project developer must collect and maintain a substantial amount of information on the buildings, low-income units, rents, and tenant incomes. Even though this can be a cumbersome process, it is extremely important that owners take it seriously and that managers be trained in tax credit compliance, as non-compliance can result in significant penalties.

For multi-building projects, compliance is monitored by building and not with respect to the project as a whole. Buildings that are 100% low income do not have to worry about certain additional compliance requirements, since they must always rent vacancies to qualified households. Initial occupancy of a unit by a non-eligible tenant can cause the loss of all future LIHTC for that particular unit. Thus the need for careful monitoring and tenant selection.

1. Determining Income Eligibility

In order to determine if a tenant is eligible to occupy a tax credit unit, managers must use HUD's updated income guidelines. Regulations require that owners adopt the updated income guidelines within 45 days of their effective date. Managers must obtain a written certification of income from each tenant occupying a tax credit unit. Tenants must sign the income certifications, and must be made aware that providing false or inaccurate information is grounds for eviction under their lease. The manager must seek third party verification for each source of income and each asset.

At or before the anniversary date of the income certifications, tenant incomes need to be recertified. At this time, tenants must update their household size and annual income. This information must be provided even if there has been no change in the tenant's income and household size.

Increases in Tenant Income: Next Available Unit Rule

Upon initial move-in certification, a tenant's annual income must not exceed the applicable area median income limit (50% or 60%) by household size. At recertification, if a tenant's income in a LIHTC unit increases above the maximum allowable income limit, the unit continues to qualify for LIHTC purposes as long as the tenant qualified on move-in *and* the unit remains rent restricted.

A LIHTC unit occupied by a tenant whose income increases above 140% of the current maximum allowable income limit continues to qualify for LIHTC purposes, as long as the unit remains rent restricted and the next vacant unit of comparable or smaller size in the building is rented to a qualified LIHTC tenant. This rule applies separately to each building in a project and is called the *next available unit rule*.

EXAMPLE: Three-person household, annual income on move-in: $20,000

60% median income limit for a three-person household: $22,500

⇒ The tenant qualifies on move-in.

Upon annual recertification, the tenant's annual income increases to $35,000.

The median income limit for a three-person household increased to $23,000 at recertification. Since $23,000 x 140% = $32,200

⇒ The tenant's recertification income of $35,000 exceeds 140% of the three-person household income limit.

The unit continues to qualify for tax credit purposes provided the owner complies with the next available unit rule.

Projects with 100% LIHTC units must always rent the next vacant unit to a qualified low-income tenant in order to remain in compliance and claim the full tax credit. Projects with both LIHTC units and market rate units must be more attentive to the next available unit rule. In these projects, the next available unit rule must be followed until the percentage of low-income units in a building (excluding the over 140% units) equals the applicable fraction of the building.

EXAMPLE A building with 100 units total: 40 LIHTC units, 60 market units

The low-income portion of the building is 40% (applicable fraction)

1. Tenant income in Apartment A (LIHTC unit) exceeds 140% of median income limit on recertification. Next available unit (Apartment B) of comparable or smaller size is a market rate unit.

   ⇒Apartment B must be rented to a qualified low-income tenant. Once Apartment B is rented to a qualified low-income tenant, Apartment A would no longer have to remain rent restricted to maintain the 40% low-income portion of the building.

2. Tenant income in Apartment A (LIHTC unit) exceeds 140% of median income limit on recertification. Next available unit (Apartment C) of comparable or smaller size is a LIHTC unit.

   ⇒Apartment C must be rented to a qualified low-income tenant. After Apartment C is rented to a qualified low-income tenant, Apartment A must continue to be rent restricted to maintain the building's qualified tax credit status. When the next available *market rate* unit of comparable or smaller size becomes available, it must be rented to a qualified low-income tenant, and Apartment A would no longer have to remain rent restricted to maintain the 40% applicable fraction of the building.

A unit occupied by a household whose income exceeds 140% of the current maximum income limit counts towards the project's minimum set-aside, as long as the household was income eligible on initial move-in, the unit remains rent restricted, and the next available unit rule is followed.

Recertification Waiver

Owners of 100% LIHTC buildings (buildings where all apartments are tax credit eligible) can request a waiver from the annual tenant income recertification requirement. The waiver would exempt an owner of a 100% low-income building from the requirements to keep records that show an annual income recertification of all low-income tenants in the building who have previously had their annual income verified, documented, and certified; maintain documentation to support the recertification; and certify to DHCR that it has received this information. The waiver does not, however, exempt owners from income certification requirements upon a tenant's initial occupancy of a residential rental unit in a 100% low-income building.

If a waiver is obtained, it does not go into effect until the next monitoring cycle. For example, if a waiver is granted by the IRS in the year 2000, then recertifications would still need to be done in 2000 but not in 2001 and all subsequent years of the compliance period.

DHCR procedure allows for a recertification waiver provided:

- The building is 100% low-income
- There is no previous or current non-compliance which would affect the building's status as a 100% low-income building

IRS procedure 94-64 delineates the process for owners of 100% low-income buildings to request a waiver. The owner must first obtain a statement from DHCR (or the relevant Housing Credit Agency) saying that in the course of its normal monitoring activities, DHCR has seen no evidence that the building's applicable fraction is less than 100%. Once the owner has obtained the required statement from DHCR, the owner may send the written request for a waiver to the IRS, with a copy to DHCR.

The waiver will not exempt the owner from tenant income recertification requirements imposed by any other federal, state, or local housing program. For example, a building with Housing Trust Fund, Turnkey, Rural Development 515, HOME, or project-based Section 8 would be eligible for the waiver under Internal Revenue Code Section 42. However, the owner would still be required to conduct annual tenant income recertifications since the waiver does not apply to these other funding sources.

Owners must still determine tenant full-time student status on an ongoing basis, and buildings with credit allocated prior to 1990 must annually verify tenant household size if the restricted rent is determined by the number of persons in the household.

2. Record Keeping

Managers must have a <u>tenant file for each tax credit unit</u>. This file must include:

- Occupant's rental application
- Income verification documents
- Income certifications
- Lease

Project managers must keep <u>documentation for each building</u> that reflects the following information as of the last day of each month:

- Total number of rental units by number of bedrooms and square footage
- Percentage of low-income units
- Rent and utility allowance for each unit
- Household size for low-income units
- Low-income vacancies, date and identity of the renter of the next available unit
- Eligible basis and qualified basis at the initial year of the tax credit period
- Type and use of non-residential space that is claimed in basis

The owner of the project must retain all records for each building for a minimum of six years after the deadline for filing the federal income tax return for each year. First year records must be kept for at least six years after the deadline for filing the federal income tax return for the last year of the compliance period (36 years).

DHCR Compliance Monitoring
DHCR monitors tax credit projects to ensure compliance with the program's requirements. The monitoring fee charged by DHCR is equal to .5% of the maximum restricted rents for the low-income portion of the project. For more detail on tax credit monitoring guidelines, you should request DHCR's Low Income Housing Credit Program Compliance Monitoring Guide from the project's DHCR asset management representative. Projects receiving LIHTC under a tax-exempt bond financing are monitored by the NYS Housing Finance Agency instead.

3. On-Site Compliance Monitoring

DHCR carries out periodic on-site compliance monitoring reviews for LIHTC projects. According to DHCR's Compliance Monitoring Guide, projects are selected at random or based on specific criteria, such as type of project funding, reserve requirements, and previous non-compliance. Tenant files and rent records must be available to DHCR during on-site monitoring visits.

4. Annual Certifications

Owners of tax credit projects must annually certify the following, under penalty of perjury:

- Compliance with income target selected by owner
- Status of the number of low-income units
- Existence of income certifications and supporting documentation for each tenant
- Status of rents in relation to maximum allowed rents
- Nature of housing: non-transient and for use by the general public
- Compliance with local health, safety, and building codes
- Status of each building's eligible basis and applicable fraction
- Status of efforts made to rent vacant units to qualified low-income tenants
- Existence of a valid extended use agreement

DHCR reviews all certifications made by the owners to ensure compliance with tax credit requirements. Similarly, DHCR reserves the right to carry out on-site inspections throughout the compliance period, and to review required records.

C. Penalties for Non-Compliance

The fifteen-year compliance period is generally called the tax credit recapture period, and it starts on the date that the property or building is placed in service. If, at any point during that period, the project, building, or dwelling unit fails to comply with the tax credit requirements, a recapture event is triggered and a portion of the credits are recaptured. Usually, as a penalty for the recapture event, the owner cannot claim the current year's tax credit, and will suffer the recapture of the *accelerated portion* of all previously claimed LIHTC. Recapture implies repaying the Internal Revenue Service the amount of LIHTC recaptured, along with any penalties and interest that may be due.

The *accelerated portion* of LIHTC results from the fact that LIHTC are earned and received over the first ten years of operation of a project, while the recapture provision amortizes the credits over a fifteen-year compliance period. Therefore, this *accelerated portion* of LIHTC is the difference between the credits available for a year, and the credits that would have been available if they had been paid evenly over the fifteen-year period. During the first eleven years, the accelerated portion is equal to one third of the annual tax credit amount. For years 12 to 15, it decreases from 4/15 to 1/15 of the annual tax credit amount.

The following are typical recapture events:

- Failing to meet the sponsor's income targeting choice (20% at 50% of AMI, *or* 40% at 60% of AMI)
- Violation of the maximum rent and income limitations
- Reductions in qualified basis through a decrease in the number of low-income units or floor space ratio
- Major habitability issues or building code violations
- Changes in ownership, including foreclosure

The penalty for decreases in qualified basis and violations to maximum rent and income limitations is different than what was explained above. In these cases, the penalty is the recapture of the portion of the credit amount corresponding to the unit or units that are non-compliant for all previous years. The recapture of LIHTC arising from a change in ownership can be prevented if the seller posts a bond to the IRS for an amount equal to the LIHTC that would have been recaptured. If the IRS determines that the project can comply with the tax credit requirements for the remainder of the fifteen-year compliance period there will be no recapture of previously claimed LIHTC.

Owners are generally given up to 90 days to cure non-compliance or lack of certification to DHCR. DHCR, in turn, reports the status of non-compliance to the IRS within 45 days after the end of the correction period. However, given that changes in the number of qualified low-income units are monitored at the end of the year, non-compliance changes that are corrected before the end of the year have no effect on the LIHTC earned. According to the regulations, no recapture is necessary when non-compliance is corrected within a reasonable period of time.

Non-Compliance as a Result of Casualty and Minor Changes in Ownership

No recapture penalties apply to qualified units that are lost through casualties (e.g. natural disasters or fires). Nevertheless, lost units must be rebuilt or replaced within a reasonable period of time and the loss must be documented. Ownership transfers of less than one third of the initial ownership are considered marginal, and do not provoke recapture of any kind. The IRS has also ruled that no recapture penalties apply when ownership is transferred between a parent company and a subsidiary, upon death of the owner, or when transfer occurs from a limited partnership to the nonprofit general partner.

6. SPECIAL NEEDS HOUSING AND LOW INCOME HOUSING TAX CREDITS

A. Issues Arising From the Use of LIHTC for Special Needs Housing

While there are many special needs housing organizations that have used the LIHTC Program successfully, there are many others that are so stunned by the Program's complexity that they do not know where to start. The continued demand for special needs housing projects and the increased competitiveness for available sources of funds require that special needs housing providers diversify their funding and become aware of the benefits of using the LIHTC Program.

Tax credit financing brings with it additional requirements for special needs projects, given that these projects combine the provision of housing with the provision of services to tenants. In order to keep these projects affordable to persons at or below 60% of the AMI, payments for services must be excluded from gross rents. This means that alternative sources of funding must be in place to finance the provision of services to tenants. Most special needs populations are at very low-income levels, and are not able to pay for the cost of services themselves. Nevertheless, Supplemental Security Income (SSI) and Medicaid payments can be used to cover the cost of providing services.

Special needs projects receive funding for two distinct activities: 1) the provision of shelter, and 2) the provision of services. Therefore, sources of income must be grouped by activity, and the cost of providing and operating the housing must be tracked separately from the expenses derived from the provision of services. Maintaining this distinction is particularly challenging in the operating phase, when projects are receiving rents and subsidies to pay for housing, at the same time that they are receiving funds to pay for the provision of services. When submitting an application for funding, the sponsor will have to prepare a budget for supportive services, separate from the real estate or shelter operating budget.

The cost of supportive services cannot be included as part of the total development cost. The cost of building the facilities where services will be provided cannot be included in the basis for LIHTC, nor can LIHTC proceeds (other than the developer's fee) be used to finance the provision of supportive services. As mentioned before, transitional housing projects are an exception and can include in tax credit basis the space used to provide services, up to an additional 20% over the cost of residential expenses for rental space. This applies even if services are provided to non-residents.

Example C on page 46 illustrates a housing and services operating budget for a special needs project. These budgets assume an assisted living facility, based on the 48-unit senior housing project presented in Example A.

B. Eligible Special Needs Projects

The following special needs housing projects are eligible for the LIHTC Program:

- Single room occupancy
- Transitional housing
- Assisted living
- Senior housing
- Housing for persons with HIV/AIDS
- Group homes
- Housing for persons recovering from addictions
- Housing for persons with mental and physical disabilities

There are some qualifications to the eligibility of the projects listed above:

<u>Single Room Occupancy</u>. SRO projects provide temporary or permanent housing for formerly homeless persons, and must rent their units for periods of at least a month.

<u>Transitional Housing</u>. These projects help transition formerly homeless individuals into independent living in periods of 24 months. Units in these projects must have their own kitchen and bathroom facilities.

<u>Assisted Living</u>. Assisted living facilities are eligible for LIHTC, as long as they do not provide daily medical and nursing services.

The following special needs housing projects are ineligible for the LIHTC Program:

- Transient housing, such as shelters
- Nursing homes

Optional Service Requirement

Some of the rules that special needs projects must follow to be eligible for LIHTC have been mentioned in the section on tax credit eligible projects. In general, all services provided in tax credit projects must be *optional*. For services to be considered optional, there must be a *practical alternative* for the tenant to be able to obtain the service. For optional meal services, practical alternatives could be common kitchens in every floor, kitchens in the apartments, or nearby places where tenants can obtain their daily meals. For optional services for the elderly, the ability of tenants to contact a home care agency or the Visiting Nurses Association would be considered a practical alternative. If payment for services is mandatory, it must be included in rents, and the total rent must not be higher than the maximum allowable rents. An exception to this payment for services rule are the charges under the Mandatory Meals Program in HUD-assisted housing for elderly and handicapped persons. In this case, regulations prevent the payment for meals from being included in gross rents.

The following requirements must be met, for payments to be considered optional:[6]

- Costs cannot be included in basis

  Capital or operating costs of providing the service cannot be included in tax credit basis. Transitional housing projects are exempted from this rule, and can include in tax credit basis the cost of space used to provide services up to an additional 20% over the cost of residential expenses for rental space.

- Service cannot be a necessity

  Services that are required by the tenants as part of the housing cannot be priced separately and claimed as optional.

- Service must be an option

  If a tenant is required to pay for a service in order to rent the housing, the cost of that service cannot be considered optional, and must be included in gross rents.

- Practical alternative must be available

  For the services to be truly considered optional, a practical alternative must be available to the tenants.

- Lease must separate payments for services from payments for rent

  The lease must distinguish between the base rent and payments for optional services.

Government subsidies for tenants are not considered part of gross rents. Therefore, projects with Section 8 tenants can charge a rent higher than the maximum tax credit rent, as long as the tenant portion of the rent does not exceed the maximum allowable rent.

[6] *The Advanced Course: Housing Tax Credits "202,"* Housing and Development Reporter and The Institute for Professional and Executive Development, October 1999.

EXAMPLE C: SPECIAL NEEDS TAX CREDIT PROJECT

This example is a 48-unit assisted living facility that offers tenants a comprehensive service package including meals, help with the activities of daily living, and recreation activities. The payroll expenses include cooking, cleaning, and social services staff. Since the service package is offered to the tenants on an optional basis, the Monthly Service Fee would not be included in rents. The cost of providing services to the tenants would most likely be covered through SSI and Medicaid payments.

Under the typical ownership structure, the nonprofit service provider would be an affiliate of the nonprofit sponsor and general partner. Cash flow from services would flow directly to the nonprofit service provider. Since the income would not pass through the partnership that owns the project, no cash distributions to the investor would be necessary.

Under the LIHTC Program guidelines, housing and services income and expenses must be reported separately. For this reason, the example presents two different operating budgets: one for housing and one for services. No operating expenses (from either housing or services) would be covered from tax credit proceeds, since the LIHTC Program only funds project development costs. Housing expenses are usually covered by rent income, while service expenses are usually covered through SSI and Medicaid payments.

EXAMPLE C: SPECIAL NEEDS TAX CREDIT PROJECT

HOUSING OPERATING PROFORMA

		YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
1. Total Effective Income from Rents		**196,361**	**202,252**	**208,320**	**214,569**	**221,006**
ADMINISTRATION						
2. Manager		24,000	24,720	25,462	26,225	27,012
3. Management Fee		20,400	21,012	21,642	22,292	22,960
4. Accounting and Audit		4,500	4,635	4,774	4,917	5,065
5. Legal		1,000	1,030	1,061	1,093	1,126
6. Asset Management Fees		2,500	2,500	2,500	2,500	2,500
7. Office Supplies and Equipment		3,000	3,090	3,183	3,278	3,377
8. Marketing & Misc.		1,496	1,541	1,587	1,635	1,684
9. Other: DHCR LIHC Monitoring Fee		1,578	1,625	1,674	1,724	1,776
10. Total Administration		**58,474**	**60,153**	**61,883**	**63,664**	**65,499**
MAINTENANCE & OPERATIONS						
11. Janitor and Cleaning Payroll		17,000	17,510	18,035	18,576	19,134
12. Janitor and Cleaning Supplies		1,500	1,545	1,591	1,639	1,688
13. Extermination		1,200	1,236	1,273	1,311	1,351
14. Garbage and Trash Removal		4,400	4,532	4,668	4,808	4,952
15. Security		222	229	236	243	250
16. Ground Expense		5,000	5,150	5,305	5,464	5,628
17. Maintenance and Repair Payroll	In Line 11	0	0	0	0	0
18. Maintenance and Repair Materials		2,500	2,575	2,652	2,732	2,814
19. Maintenance and Repair Contracts		1,000	1,030	1,061	1,093	1,126
20. Elevator		2,000	2,060	2,122	2,185	2,251
21. Snow Removal		4,500	4,635	4,774	4,917	5,065
22. Painting and Decorating		2,000	2,060	2,122	2,185	2,251
23. Other: Fire/Emergency System Inspections		2,000	2,060	2,122	2,185	2,251
24. Total Maintenance and Operation		**43,322**	**44,622**	**45,960**	**47,339**	**48,759**
UTILITIES						
25. Fuel Oil		0	0	0	0	0
26. Lighting/Electricity		11,292	11,631	11,980	12,339	12,709
27. Water and Sewer		3,750	3,863	3,978	4,098	4,221
28. Gas		9,978	10,277	10,586	10,903	11,230
29. Other		0	0	0	0	0
30. Total Utilities		**25,020**	**25,771**	**26,544**	**27,340**	**28,160**
TAXES AND INSURANCE						
31. Real Estate Taxes		4,800	4,944	5,092	5,245	5,402
32. Payroll Taxes		7,790	8,024	8,264	8,512	8,768
33. Other: Employee Benefits		4,800	4,944	5,092	5,245	5,402
34. Property and Liability Insurance		7,100	7,313	7,532	7,758	7,991
35. Fidelity Bond Insurance		500	515	530	546	563
36. Other		0	0	0	0	0
37. Total Taxes and Insurance		**24,990**	**25,740**	**26,512**	**27,307**	**28,126**
38. Operating Reserve		5,891	6,068	6,250	6,437	6,630
39. Replacement Reserve		19,997	19,997	19,997	19,997	19,997
40. Total Reserves		**25,888**	**26,065**	**26,247**	**26,434**	**26,627**
41. Total Expenses		**177,694**	**182,350**	**187,145**	**192,085**	**197,172**
42. Net Operating Income		**18,668**	**19,902**	**21,174**	**22,485**	**23,834**
43. Debt Service Bond		0	0	0	0	0
44. Developer Fee Note		0	0	0	0	0
45. Debt Service Soft Debt(HOME/HTF/HOPE VI)		17,800	17,800	17,800	17,800	17,800
46. Total Debt Service		**17,800**	**17,800**	**17,800**	**17,800**	**17,800**
47. NET CASH FLOW FROM RENTS		**868**	**2,102**	**3,374**	**4,685**	**6,034**

SERVICE OPERATING PROFORMA (ANNUAL)

1.	Monthly Service Fee Per Unit	$614
2.	**Annual Effective Income from Services**	**$353,664**
	EXPENSES	
3.	Payroll	$216,686
4.	Housekeeping Supplies	$7,474
5.	Food	$84,823
6.	Recreation	$10,677
7.	Miscellaneous	$1,500
8.	Total Service Expenses	$321,160
9.	Profit and Overhead	$32,116
10.	**Total Services Operting Cost**	**$353,276**
11.	**NET CASH FLOW FROM SERVICES**	**$388**

C. Exception for Certain Special Needs Housing Projects

Section 42 of the Internal Revenue Code establishes an exception to the rules on service provision explained above. This exception states that, for purposes of section 42(g)(2)(B)(iii):

> A supportive service is any service provided under a planned program of services designed to enable residents of residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped.

Projects that provide transitional housing for the homeless are also included in this exception, and supportive services in this case include "any service provided to assist tenants in locating and retaining permanent housing."

According to Joseph Guggenheim, the author of *Tax Credits for Low Income Housing*, payments for supportive services in these special needs projects are not considered part of gross rents, and are not counted against the maximum allowable tax credit rents. These payments must come from a government program or nonprofit organization, and must provide a combined payment for housing and services.[7] This exception, however, might not be applicable to all special needs projects. The nonprofit sponsor should be aware that, most likely, it will be left to the judgement of the tax credit investor and its tax counsel whether or not a specific project qualifies for this exception.

D. Benefits of Using LIHTC in Special Needs Projects

Given the scarcity of funds and the persistent need for affordable housing, using LIHTC to finance special needs housing projects allows groups to broaden their funding sources. The use of LIHTC can help leverage additional funds. By reducing the amount of money that a project would need from specific funding sources, such as HOME or HTF, LIHTC increase a project's competitiveness.

Through the developer's fee, tax credit financing brings an additional inflow of capital to special needs housing providers. These funds can be used, among other things, for the following purposes:

- Subsidizing project rents to target lower income residents
- Paying for project services offered to tenants
- Covering the cost of staff to comply with monitoring and reporting requirements

[7] Guggenheim, Joseph. *Tax Credits for Low Income Housing*, 10th Edition. Glen Echo, Maryland: Simon Publications, 1998, page 37.

E. Examples of Special Needs Projects Utilizing LIHTC

Within the framework described above, different types of special needs housing can be funded in part with LIHTC equity. In this section, we will talk about assisted living facilities for the elderly, SROs for homeless persons, and supervised independent housing for developmentally disabled adults supported by the NYS Office of Mental Retardation and Developmental Disabilities (OMRDD).

1. Assisted Living for Frail Elderly

Assisted living is becoming popular as an intermediate step between living independently and living in a nursing home. Part of its popularity is derived from the fact that it provides elderly tenants with a less restrictive environment, at a lower cost than the traditional nursing home setting. Under the assisted living model, tenants are offered basic services for a monthly fee and a menu of additional services from which to choose according to their individual needs. This structure allows tenants the flexibility to modify their service selection as their needs change.

The service packages provided by assisted living facilities typically include:

- One or more daily meals served in a common dining room
- Organized social, recreational, and physical fitness activities led by paid staff
- Assistance with the activities of daily living including dressing, bathing, and ingress and egress from bed
- Housekeeping and linen service
- Transportation
- Assistance with record keeping and preparation of paperwork for health insurance reimbursement claims
- Medication administration
- Advocacy with service providers

In New York State, assisted living housing is mostly market rate with a full service package, with rents (including services) starting at $2,000 per month. Using LIHTC to finance low-income assisted living facilities has proven challenging, due to the following issues:

- Physical configuration of the apartments
  To be LIHTC eligible, rental units must be configured as separate apartments, each with its own kitchen and bathroom facilities. This precludes the LIHTC Program from being used to finance facilities that have shared units or units without kitchens.
- Definition of residential rental properties
  To be LIHTC eligible, projects must qualify as *residential rental properties.* In order to qualify as a residential rental property, a project must comply with two characteristics:
  a) Each unit must have facilities for living, sleeping, eating, cooking, and sanitation.

b) Units must not be defined for use on a transient basis, as is the case of motels, dormitories, hospitals, nursing homes, retirement homes, and trailer parks.

In 1997, the IRS issued a Private Letter Ruling (9740007) that made it difficult to characterize assisted living facilities as residential rental properties by concluding that a proposed assisted living facility constituted a "health care facility." Even though the level of service provision is not explicitly considered in the definition of residential rental properties, the Private Letter Ruling looked at the following characteristics of the specific project under consideration:

a) Regulated by the state health department
b) Emphasized the availability of immediate medical services
c) Regulated by the state as to the medical treatment of the residents and the necessary staffing levels.

Therefore, a state's regulatory environment regarding assisted living facilities is crucial in determining whether they will be defined as residential rental properties or as health care facilities. Developers of assisted living projects must be aware of their state's assisted living requirements in order to determine if they are compatible with the LIHTC Program's guidelines.

- Level of medical services provided
  The level of medical services provided in an assisted living project must allow the project to remain classified as a *residential rental property*. Admitted tenants must be able to live independently with the limited levels of assistance provided by the facility, in order for the facility to be classified as a residential rental property. Availability of around-the-clock medical personnel can lead the IRS to qualify the building as a health care facility, instead of as a residential rental property.

- Rent restrictions
  Under LIHTC regulations, projects must restrict their rents to a maximum of 30% of 60% of the AMI. If services are required as a condition of occupancy, payment for these services must be counted as part of the rent. If services are considered optional, then a "practical alternative" must exist for tenants to be able to obtain those services. This structure forces projects to obtain subsidies to cover the cost of providing services, since including the cost of services in the rent pushes the rents over the allowable limits, and maintaining services as strictly optional undermines the feasibility of providing them at all.

- Allowable subsidies
  According to LIHTC regulations, payments made by a government program to a project owner for supportive services that allow a resident to live independently do not have to be included in rent. A condition of this exception is that the subsidy must provide assistance for both rent and services and may not be separated. An example of this exception would be payments made by the state to qualifying individuals under Supplemental Security Income (SSI). Projects using these payments are allowed to charge their tenants a single fee for rent and basic services without exceeding the tax credit rent limits, since the portion covered by SSI payments does not count toward the rent.

Most market-rate facilities bundle service and shelter costs into a single monthly payment. Building operators have found that un-bundling the service and shelter components of the rent, as is required under LIHTC regulations, may result in a two-fold danger. First, operating income may vary while the cost of offering the services remains constant, which can result in a negative cash flow to the building. Second, low-income elderly residents, in order to conserve funds, may jeopardize their health by opting to forego needed services.

Consultations with the NYS Department of Health resulted in a three-tiered approach to developing an assisted living facility with LIHTC[8]. Under this scenario, the sponsor would first build a facility that complies with the LIHTC Program requirements. Then, the sponsor would seek a license for the facility as Enriched Housing. Finally, the sponsor would become a Licensed Home Care Services Agency (LHCSA). Being licensed as Enriched Housing allows the facility to receive $800 a month from the tenant's Level II SSI payments. These payments can cover the cost of shelter and services, and there are no specific guidelines as to how the sponsor should allocate them. Becoming a LHCSA allows the sponsor to access Medicaid funds, which can pay an additional $1,000 for services provided to the individual. Neither the Level II SSI payments, nor the Medicaid payments, would be counted towards rent.

Under this scenario, each tenant would have a service plan based on an initial needs assessment. This service plan would establish the services needed by the tenant, their cost, and the sources of funding that would be used to pay for them. The Enriched Housing facility would charge for any "non-touching" services provided, such as meals, care management, and a concierge. The LHCSA would charge for any "touching" services provided to the individual. Remaining costs could be paid by family contributions or by spending down on assets. Services, unless they were covered by Medicaid or Level II SSI payments, would not be obligatory and their cost would not be counted as part of the rent.

This scenario could potentially represent a successful way of providing assisted living in New York, using the LIHTC Program. Sponsors wanting to undertake an assisted living project would need to go through this three-part process in order to access Medicaid funds, given that Level II SSI payments are not enough to cover the cost of providing supportive services. Accessing Medicaid funds helps sponsors cover the cost of providing the services that their tenants need to be able to live in an assisted living environment. Currently, Enriched Housing has mostly been made available in a small percentage of apartments per project. These projects are usually pre-existing buildings that look at Enriched Housing as a way to satisfy the needs of frail or aging-in-place seniors. In this scenario, the $800 monthly payment is often insufficient to cover operating costs, and most projects operating Enriched Housing units are struggling to succeed.

[8] For the purposes of this section, we met with Susan Peerless, Deputy Commissioner for Continuing Care from the NYS Department of Health.

This model would comply with the residential rental property requirement of the LIHTC Program, because the health-related services would be provided by an entity different from the owner: the sponsor, presumably also the general partner in the limited partnership that would own and operate the project. The model would comply with the LIHTC Program's rent restriction, because Medicaid and Level II SSI payments would not be counted as part of the rents.

Scale would be an important consideration for the success of such a project, since the infrastructure required to provide the services would make it unfeasible at a small scale. A 100-unit project would probably be considered the smallest feasible size. A second consideration would be the need to capitalize a rent-up reserve, because occupancy in these projects is need-driven and not market-driven, resulting in a longer rent-up period than is typical for independent living projects. Sponsors must consider that these market characteristics might conflict with the LIHTC requirement to place the building in service within two years of the end of the year in which the carryover allocation was achieved. A possible solution would be to build the project in phases, renting each phase within the LIHTC requirements and treating it as a separate LIHTC project with lower debt.

2. Homeless Housing (SROs)

Facilities for the homeless can be partially funded with LIHTC equity if they meet the criteria described at the beginning of this section. Homeless Housing Assistance Program (HHAP) funds provided as a low-interest loan (1% interest only, payable from cash flow and accrued if cash flow is insufficient) and LIHTC equity can be combined to fund development costs, including capitalized operating reserves.

Homeless SROs and other forms of transitional housing are of necessity combined with services for the formerly homeless residents. As mentioned before, the cost of services that are required as a condition of occupancy must be included in the rent, and that rent must be at or below the statutory limit. Services can be funded from other sources, which include:

- NYS SRO Support Service Grants
- A sinking fund established from the developer's fee paid to the nonprofit sponsor
- Additional funds secured by the sponsor

The opportunity to capitalize a reserve to support services with a portion of the developer’s fee can provide substantial advantages to the nonprofit sponsor. Most LIHTC investors will be wary of projects that depend on annual grants or legislative appropriations for operating feasibility. Creating a reserve from the developer’s fee can provide the security needed to satisfy investors. Such capitalized reserves can be substantial, as shown in the following example of a 40-unit SRO.

Project Costs:

- Land $100,000
- Construction $2,400,000
- Soft Costs $280,000

Maximum Developer's Fee allowed under current QAP:

$412,000, approximately $10,000 per dwelling unit

Utilizing 50% of the developer's fee, or $200,000, to create a sinking fund can generate approximately $18,000 per year over the 15-year initial compliance period. This reserve can be established as a cushion for unexpected operating costs and as a source of funds to offset service-related expenses.

3. Group Homes for the Developmentally Disabled

OMRDD group homes for developmentally disabled adults abound in many communities. Typically, these are licensed facilities supported by capital and operating grants from OMRDD and sponsored by community-based nonprofits. The service package for residents includes supervision, training in daily living skills, and counseling. These services are delivered through the nonprofit's staff.

Shelter can be separated from service provision for the purposes of LIHTC compliance, if the nonprofit contracts directly with OMRDD for service delivery. While the nonprofit may also act as the sponsor, developer and general partner of the real estate entity (the limited partnership), that real estate entity is not the service provider. Therefore, the shelter rents can potentially be established at levels that comply with LIHTC requirements under the following scenario. Group homes may be treated as SROs with shared kitchen and bath facilities. Nevertheless, to meet the LIHTC requirements, residents must be nominally capable of functioning in the home without mandated services beyond those included in the rent. Supervision might then be included in the rental cost calculation, with other services defined as optional and provided by the nonprofit under the OMRDD contract.

Investor concerns for a sustainable operation over at least the first 15-year period must also be addressed in this case. Since the tenant population will require a basic level of support services built into the operation of the project, the cost of providing these basic services should be supported by rents or funded through a capitalized reserve (as described in the previous section). OMRDD's history in supporting group homes should also reassure investors of a project's feasibility.

7. INTERRELATIONSHIPS BETWEEN LIHTC AND OTHER FINANCING PROGRAMS

Working with the LIHTC Program and other financing programs at the same time can reduce the amount of LIHTC that a project can claim by reducing either the eligible basis or the Credit rate. This section addresses some of those financial interactions. Different funding programs may also have different compliance requirements. If that is the case, managers and project owners must comply with the most stringent requirements, to ensure they are fulfilling their obligations to all funding sources.

A. Community Development Block Grants (CDBG)

CDBG funds work well with the LIHTC Program, given that low-interest loans provided through this program do not reduce the amount of LIHTC for a project. Loans provided by HUD under the Section 108 program cannot be used for new construction, but can cover the costs of rehabilitation, acquisition, and site improvements.

B. HOME

Subsidies and subsidized loans received under the HOME program qualify for the 9% tax credit. However, at least 40% of the units must be occupied by households below 50% of the AMI, and the project must give up the 30% bonus if it is located in a qualified census tract or DDA. In New York City, projects need only have 25% of the units below 50% of the AMI.

C. Housing Opportunities for Persons with AIDS (HOPWA)

Funds provided under this block grant program can be used to cover development costs, or can be structured as periodic rental assistance and payment for supportive services. Given that HOPWA is a state-funded program, it does not affect a project's tax credit rate. HOPWA funds that are used to cover development costs can be claimed in basis, as long as they are structured as loans and not as grants.

D. McKinney Funds

The McKinney Act provides federal assistance for homeless programs, including:

- Emergency Shelter Grants
- Supportive Housing Grants
- Shelter Plus Care
- Section 8 Moderate Rehabilitation (rental assistance for SROs)

- Rural Homeless Grant Program (grants to local governments, Indian Tribes and nonprofits to provide direct intervention assistance to overcome homelessness).

Supportive Housing Grants, when structured as loans, may be combined with LIHTC to fund project development costs. Operating subsidies provided under Supportive Housing and Mod Rehab may be used on LIHTC projects without conflicting with the LIHTC restrictions. These funds can be included in basis and do not affect the project's Credit rate. Shelter Plus Care funds can be used to pay for services in LIHTC eligible facilities.

E. Section 8 Assistance

Funds provided by the Section 8 Housing Assistance Program and operating subsidies or reimbursements for public housing are not considered federal grants by the IRS, and do not reduce a project's eligible basis or tax credit amount.

F. HOPE VI Programs

The HOPE VI program is an initiative by the U.S. Department of Housing and Urban Development to replace obsolete and failed public housing complexes. HOPE VI provides grant funds for PHAs to demolish and replace such projects with new public housing developed with mixed-financing. Mixed-financing typically means utilizing LIHTC equity, municipal funds, and HOPE VI funds to develop public housing. Such housing is then owned by a limited partnership, but some or all of the units continue to receive operating subsidies under the local PHA’s Annual Contribution Contract (ACC). Typical HOPE VI projects are large (over 200 units), and use tax-exempt bond financing during construction, and 4% LIHTC equity and HOPE VI funds as a soft loan for the permanent financing. In New York State, the Albany, Buffalo and New York City PHAs have received HOPE VI awards.

G. Tax-Exempt Bonds

Projects can obtain as-of-right LIHTC that do not count against the state's per capita allocation when they are financed with tax-exempt bonds subject to the annual private activity bond volume cap. These projects, however, can only obtain 4% credits, given that they use subsidized funding through the tax-exempt bonds. To qualify for LIHTC, 50% or more of the project's total development costs must be financed with bonds. As a result, it is common for projects to finance the majority of construction costs through short-term bonds that are paid off with tax credit equity at the end of construction.

H. Homeless Housing Assistance Program (HHAP)

Funds provided under this program can be used for the acquisition, construction or rehabilitation of housing for homeless persons and families, including special needs populations. HHAP funds can be used for providing permanent, transitional, or emergency supportive housing. Since HHAP is a state-funded program, as long as the funds provided are structured as a loan and not a grant, they can be claimed in basis for the calculation of the tax credit amount at the 9% rate.

8. SELLING YOUR CREDITS

A. Finding and Selecting Investors

The market for LIHTC investments is changing continuously. Project sponsors should sample market demand and pricing for their LIHTC projects from multiple potential investors. This should be done both far ahead of the time they apply for an allocation (since the syndicator offer is part of the scoring), and prior to finalizing any equity investment agreement. The competition for LIHTC among investors continues pushing the price of the tax credit dollar upwards, and project sponsors need to be up to date in order to get the best possible deal for their credits. For instance, in the late 1980s, tax credit investors were typically paying $0.42 in equity for each tax credit dollar. This gave them a return on their investment that often exceeded 20%. Currently, tax credit investors are paying above $0.75 in equity for each tax credit dollar, with returns that are averaging below 8%.

The changes in the LIHTC market have been driven by several factors:

- The increased demand for tax credit investment opportunities, as more and more corporate investors are educated in the potential advantages of these investments and join the market place
- A decreased perception of the risk involved in such investments
- The rate of return available from alternative investments, which moves the price of the tax credit dollar upward in times of decreasing interest rates and downward as interest rates increase
- Changes in Community Reinvestment Act (CRA) rules in late 1995

1. Sources of Equity Financing

Because of alternate minimum tax requirements under the federal tax code, only widely held C corporations typically invest in tax credit projects. Widely held C corporations are publicly traded corporations that have more than 35 shareholders. These corporations are not subject to alternate minimum tax rules, and are therefore not restricted in the amount of tax credits that they can claim in any given year. Individuals, S type corporations, and professional corporations are severely limited in their ability to utilize LIHTC.

There are two primary sources for securing a tax credit investment: tax credit syndicators and private placements.

a. Tax Credit Syndicator

Tax credit syndicators are a set of specialized investment banking firms that raise funds from corporate investors and reinvest those funds, often in pools, in a set of tax credit projects. Tax credit syndicators compete with each other both to secure investment capital from corporate investors, and to purchase LIHTC in individual projects.

Typically, the syndicator performs a due diligence review of the project's feasibility and soundness on behalf of the investor, prior to making a final investment commitment. Syndicators often provide compliance monitoring services for the investor or pool of investors for the duration of the compliance period. Syndicators charge investment banking fees that come out of the investment capital, leaving the net amount to be paid into the project's limited partnership. Increased competition in recent years has served to reduce those investment banking fees or transaction costs.

There are several different types of tax credit syndication firms, including firms that are subsidiaries of major banks or stock brokerage firms, firms that are free standing and specialize in low-income housing investments, and not-for-profit-based foundations. A list of the most active tax credit syndicators in the state is included in Appendix F.

b. Private Placements

The second potential source for securing a tax credit investment is a direct investment by a single corporation in a specific project, often called a private placement. Private placements are increasingly rare, as most corporations prefer to invest through a pooled syndication, which reduces the risk of their investments through diversification.

For several reasons, the best candidates for direct investments have usually been banks. First, banks (including thrifts) have developed expertise in real estate analysis, including multi-family projects. Second, banks can obtain Community Reinvestment Act credit for LIHTC investments. Third, the typical investment term of 15 years is often acceptable to banks. Nevertheless, banks without prior experience in tax credit investments will probably require an extensive commitment of time and energy to educate themselves and analyze the impact of such investments. This process, for first-time tax credit investors, will require the knowledge of an experienced sponsor, tax credit consultant, or tax attorney.

Project Proposal

Whether approaching a syndicator or an individual or corporate investor, it is useful to prepare a package of information on your project that incorporates all the information that will be needed to analyze the investment. Such a package should include the following items:

- Background information on the sponsor/general partner, including résumés and financial statements
- Development and operating budgets for the project, including an explanation of the financing terms for each funding source
- A copy of the market study
- A site location map with photographs of the site and the surrounding area
- Résumés for other key members of the development team, including the builder, the project architect, and the managing agent

2. Role of the Tax Credit Consultant

The complex and often rapidly changing conditions of the tax credit investment market require that organizations sponsoring tax credit projects for the first time secure experienced professional advice. This advice can be provided by an attorney, an accountant experienced in tax credit investment and syndication, or a specialized finance or housing consultant. The business terms, conditions, risks to the sponsor, and actual economic benefits can be very difficult to determine without such advice.

When seeking a tax credit investor, it is good practice to provide syndicators and potential sources of private placements with a package describing your project, and request proposals or term sheets from them. Tax credit consultants often have already developed contacts with potential investors and can help project sponsors package their projects and solicit proposals.

Consultants can also play a crucial role in helping organizations achieve the best deal available in the tax credit market, and ensuring that project developers fully understand the terms of the potential investment. Consultants can lead sponsors through the time-consuming process of analyzing different proposals, and comparing their terms with regards to guarantee requirements, pay-in schedules, and conditions for funding. Sponsors must be aware, however, that investment proposals often do not adequately describe all the conditions and requirements of the investor. Therefore, it is advisable to request an example of the form of limited partnership agreement utilized by the investor, which will contain all such information.

3. Role of the Syndicator

The syndicator's role must be fully understood by the sponsor. A syndicator acts as a broker between a pool of tax credit investors and a potential set of project sponsors. Typically, the syndicator is marketing to corporate investors an investment opportunity represented by a group of tax credit projects. Since this marketing effort constitutes an offering under the Federal Securities Law, the following information must be fully described and disclosed to potential investors:

- Projected return on the investment
- Risks associated with the investment
- Risk containment measures taken by the syndicator and required of the sponsor
- Due diligence procedures

At the other end of the transaction, the syndicator must negotiate investment terms with the sponsor that are consistent with the offering and marketable to the investors. After a preliminary negotiation of investment terms with the sponsor, the syndicator must perform a background review to assess the project's feasibility. This process, called the due diligence review, includes information on the following issues:

- Analysis of the sponsor's capacity and experience
- Market conditions for that particular affordable housing project

- Environmental review
- Local approvals
- Other financing involved in the project

Following the due diligence and the investment closing, the syndicator is generally responsible to the investors for monitoring the construction process, the release of future installments of the investment, and compliance with tax credit requirements during the rent-up and operating periods.

4. Investor Pay-In Schedules and Bridge Financing

Tax credit investment pay-in schedules determine how and when the investor will pay the LIHTC equity. Pay-in schedules have improved greatly in recent years. Current pay-in schedules typically provide 60% to 80% of the total investor capital contributions during construction, and the remainder in two installments: 1) at construction completion, and 2) at rent-up and issuance of the Form 8609. Form 8609 indicates the annual LIHTC amount, and is issued by DHCR (as the Housing Credit Agency) once construction has been completed, the cost audit has been carried out, and a certificate of occupancy has been issued for the project.

Bridge or temporary financing must be secured for most projects, since a portion of the tax credit equity will not be available during construction to fund acquisition, construction, and related soft costs. Government lenders, such as the NYS Housing Trust Fund, often prefer to make permanent loans only and avoid construction period funding. A common alternative is to obtain construction loans that are paid off with permanent funding and future equity payments. When structuring such loans, it is important to make sure that the timing of the equity payments allows for the payoff of the construction financing. In many instances, a portion or all of the developer’s fee must be deferred during construction, and paid out of the last equity payment.

5. Considerations in Selecting Investors

Several factors are worth considering when evaluating proposals from investors or syndicators. Foremost, sponsors must take into account that they are partnering with the investor for at least fifteen years. As partners, their ability to communicate, to understand each other’s needs, and to agree on goals will be central to the long-term success of the project.

Equally important are the following business and financial considerations, which should be carefully examined when comparing equity offers:

A. Total Investment
   Typically, this amount is expressed both in dollars and in cents per tax credit dollar.

B. Equity Pay-In Schedule
More money upfront reduces construction and bridge financing, thereby reducing construction period carrying costs. Nevertheless, since investors are seeking specific levels of return on their investment, quicker pay-ins usually lead to a lower total investment amount.

C. Right of First Refusal
Most nonprofit sponsors desire to buy out the investor at the end of the fifteen-year compliance period, to maintain the affordable status of the project over a longer term. Some investors are more amenable than others to providing this option to the nonprofit sponsor.

D. Guarantees
Investors and syndicators typically seek four specific guarantees: 1) construction completion, 2) operating deficits, 3) repurchase, and 4) tax credit compliance. While construction completion, repurchase, and compliance obligations often cannot be negotiated, the term of the operating deficit guarantee (usually 3 years) and a cap on that guarantee are usually subject to negotiation.

E. Track Record
The investor or syndicator's track record, as well as their reputation for closing in a timely manner and honoring their commitments, are important factors. These can be checked with other sponsors, preferably those who have closed deals with the investor or syndicator you are interested in.

F. Reporting Burden
The investor's periodic reporting requirements are typically spelled out in the initial equity offer. These reporting requirements, and the associated burdens on management resources, should be compared among the equity offers under consideration.

G. Decision Making Process
While the investor limited partner's role in day-to-day operations is very limited, it is important to analyze which partnership actions will require prior investor approval. Some investors will require prior approval to make modest improvements to the project.

B. Use of the Proceeds of the Tax Credit Sale

The sale of LIHTC can provide funds for both permanent and construction financing. In general, equity raised from the sale of LIHTC can be used to pay any portion of a project's construction costs, including soft costs. Developer fees are usually paid from tax credit proceeds, given that they are earned under the LIHTC Program.

Operating and replacement reserves can also be funded from tax credit proceeds, but they must be funded according to DHCR's guidelines. This is true regardless of the source that reserves are funded with, as DHCR can reduce the allocation of LIHTC if reserves are considered "excessive" and unnecessary for the project. This raises an issue for special needs housing providers, since such providers are often interested in funding larger reserves than those permitted by DHCR's standards to cover operating losses or subsidize the provision of services. DHCR limits tax credit funding to real estate expenses and does not recognize the cost of providing supportive services, which may be financed from other sources. Nevertheless, DHCR recognizes the developer's fee as a payment, which the developer may use to finance the cost of supportive services.

C. Benefits for Investors

1. Reduction of Federal Income Tax

The primary benefit investors seek by investing in tax credit projects is the stream of federal income tax savings derived from the ten years of Low Income Housing Tax Credits. In return for an equity investment, investors typically secure 99% or more of the partnership interest in the LIHTC, which represent a dollar-for-dollar reduction in the investor's federal income tax liability.

2. Depreciation-Derived Losses

In addition to the tax reduction provided by the LIHTC themselves, the investor benefits from any operating losses generated by the project. Tax credit projects, as residential real estate, are depreciated in 27.5 years. Therefore, tax credit projects can claim an annual depreciation expense equal to one twenty-seventh and one half of the depreciable basis, which is essentially equal to the tax credit basis. This depreciation-derived loss reduces the investor's tax liability in an amount equal to its effective tax rate. If, for example, the investor’s effective annual tax rate is 36% of net income, losses of $100,000 will provide tax savings to the investor of $36,000.

3. Other Operating Losses

In addition to the depreciation-derived losses, other project financing elements can contribute to operating losses for tax purposes. Interest is an expense for income tax purposes and interest accrued or paid on soft loans, such as the NYS Housing Trust Fund Corporation loans, directly increases taxable losses and the resultant benefit to the investor. Certain items, such as appliances, can be depreciated over a shorter period of time than the building, thus providing additional losses in the early years of project operation.

4. Cash Returns, Capital Gains and Incentive Management Fees

Beyond the tax benefits from credits and losses, investors seek the potential for a cash-on-cash return from net project cash flow, and a capital gain from the sale or refinancing of the project at the end of the initial compliance period. In reality, very few affordable housing projects actually generate significant cash flow from operations, and extended use period requirements make capital gains after fifteen years an unlikely outcome. The current practice in the tax credit market is to provide for incentive management fees, which pay up to 90% of cash flow to the general partner. The benefit of this practice is that it offers an incentive to the general partner to provide sound property management without eroding the investor's tax losses.

Most investors calculate the return on their investment, based on tax benefits and depreciation losses, before committing themselves to invest in any tax credit project. A typical equity investment analysis calculation is illustrated in Example D. The analysis presented in this example is based on the 48-unit senior housing project from Example A.

EXAMPLE D: EQUITY INVESTMENT ANALYSIS

We have assumed that the investor limited partner is acquiring 99.9% of the interest in the limited partnership. This implies that the investor can only claim 99.9% of the tax credits available. Similarly, 99.9% of any cash distributions from the project would be distributed to the investor. Investors typically carry out the equity investment analysis for a fifteen-year period, and use the Internal Rate of Return to assess the return on their investment.

It is worth noting the following about this example:

- *Line 1, Cash Flow from Operations, is the Net Operating Income before subtracting the debt service payments.*
- *Interest payments can be deducted from taxes, but payments of principal cannot.*
- *The Depreciation deduction (line 5) is equal to the total tax credit basis divided by 27.5, which is the period mandated for depreciating residential real estate. This is merely a simplification, as most accountants would depreciate certain items, such as equipment, in a shorter time frame.*
- *The Incentive Management Fee (line 6) has been calculated as 75% of Cash Flow from Operations.*
- *We have calculated the Cash Distribution to the investor as 99.9% of the remaining cash flow, once the Incentive Management Fee has been paid out.*
- *We have assumed that there is no gain or loss by selling the property at the end of 15 years.*

EXAMPLE D: EQUITY INVESTMENT ANALYSIS

	Construction Period	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
PROFIT/LOSS STATEMENT						
1. Cash Flow from Operations		18,668	19,902	21,174	22,485	23,834
2. Deductions						
3. Interest on Mortgage		17,800	17,800	17,800	17,800	17,800
4. Interest on Deferred Fees		0	0	0	0	0
5. Depreciation		133,377	133,377	133,377	133,377	133,377
6. Incentive Management Fee		14,001	14,927	15,881	16,863	17,876
7. Total Deductions		165,178	166,104	167,058	168,040	169,052
8. TAXABLE INCOME (LOSS)		**(146,510)**	**(146,201)**	**(145,883)**	**(145,556)**	**(145,218)**
SUMMARY OF INVESTMENT BENEFITS						
Projected Tax Rate: 36%						
We obtain the tax savings from operations by multiplying the taxable loss by the projected tax rate						
9. Tax Savings From Operations		52,744	52,632	52,518	52,400	52,279
We obtain the LIHTC by multiplying the annual LIHTC amount by the percentage owned by the investor (99.9%)						
10. Low Income Housing Credits		300,464	300,464	300,464	300,464	300,464
11. Total Tax Benefits		353,208	353,097	352,982	352,864	352,743
12. Cash Distribution		4,662	4,971	5,288	5,616	5,953
13. TOTAL BENEFITS		**357,870**	**358,067**	**358,271**	**358,480**	**358,695**
The investment stream is the equity investment schedule proposed by the investor						
14. Investment Stream	744,390	1,336,346	175,000			
15. Total Investment	2,255,736					
We obtain the net benefit stream by subtracting the investment stream from the total benefits						
16. NET BENEFIT STREAM	**(744,390)**	**(978,476)**	**183,067**	**358,271**	**358,480**	**358,695**
17. IRR ON INVESTMENT	**16%**					

	YEAR 6	YEAR 7	YEAR 8	YEAR 9	YEAR 10
PROFIT/LOSS STATEMENT					
1. Cash Flow from Operations	25,224	26,656	28,130	29,649	31,213
2. Deductions					
3. Interest on Mortgage	17,800	17,800	17,800	17,800	17,800
4. Interest on Deferred Fees	0	0	0	0	0
5. Depreciation	133,377	133,377	133,377	133,377	133,377
6. Incentive Management Fee	18,918	19,992	21,098	22,237	23,410
7. Total Deductions	170,095	171,169	172,274	173,414	174,587
8. TAXABLE INCOME (LOSS)	**(144,871)**	**(144,513)**	**(144,144)**	**(143,765)**	**(143,373)**
SUMMARY OF INVESTMENT BENEFITS					
Projected Tax Rate: 36%					
9. Tax Savings From Operations	52,154	52,025	51,892	51,755	51,614
10. Low Income Housing Credits	300,464	300,464	300,464	300,464	300,464
11. Total Tax Benefits	352,618	352,489	352,356	352,219	352,079
12. Cash Distribution	6,300	6,657	7,026	7,405	7,796
13. TOTAL BENEFITS	**358,917**	**359,146**	**359,382**	**359,624**	**359,874**
14. Investment Stream					
15. Total Investment					
16. NET BENEFIT STREAM	**358,917**	**359,146**	**359,382**	**359,624**	**359,874**

	YEAR 11	YEAR 12	YEAR 13	YEAR 14	YEAR 15
PROFIT/LOSS STATEMENT					
1. Cash Flow from Operations	32,825	34,484	36,194	37,955	39,768
2. Deductions					
3. Interest on Mortgage	17,800	17,800	17,800	17,800	17,800
4. Interest on Deferred Fees	0	0	0	0	0
5. Depreciation	133,377	133,377	133,377	133,377	133,377
6. Incentive Management Fee	24,619	25,863	27,145	28,466	29,826
7. Total Deductions	175,795	177,040	178,322	179,643	181,003
8. TAXABLE INCOME (LOSS)	**(142,971)**	**(142,556)**	**(142,128)**	**(141,688)**	**(141,235)**
SUMMARY OF INVESTMENT BENEFITS					
Projected Tax Rate: 36%					
9. Tax Savings From Operations	51,469	51,320	51,166	51,008	50,845
10. Low Income Housing Credits	300,464	300,464	300,464	300,464	300,464
11. Total Tax Benefits	351,934	351,784	351,630	351,472	351,309
12. Cash Distribution	8,198	8,612	9,039	9,479	9,932
13. TOTAL BENEFITS	**360,132**	**360,397**	**360,670**	**360,951**	**361,241**
14. Investment Stream					
15. Total Investment					
16. NET BENEFIT STREAM	**360,132**	**360,397**	**360,670**	**360,951**	**361,241**

Many investors are prepared to grant not-for-profit sponsors a right of first refusal under Section 42 (h)(6)(F). Under this provision, a not-for-profit organization (with 501.c.3 status) may be granted an option by the tax credit investor to acquire the investor's limited partnership interest at the end of 15 years. The cost of such acquisition to the nonprofit is usually the cost of assuming the debt on the project and paying the investor for the federal and state tax liability resulting from the transfer. Usually, the nonprofit organization buys the property for a dollar and continues the payments on the mortgage, because the terms and conditions of the debt do not change. In some cases, DHCR agrees to convert the debt to a grant at the end of the initial compliance period, and the nonprofit organization acquiring the property from the limited partnership is forgiven the balloon payment for the amount of the debt due at the end of 30 years. While it is impossible to predict what the requirements of the tax code will be in fifteen years, under the current code, the investor's tax liability on the transfer would be minimal.

9. RISKS INVOLVED IN THE LIHTC PROGRAM

A. Risks to the Investor

From the investor's perspective, there are multiple risks resulting from the investment in a tax credit project. In the event of non-compliance, the investor could face a recapture of the LIHTC claimed, a repayment of income taxes previously offset with credits, penalties and interest on the underpaid tax liability, as well as a loss of the equity invested. If the project sponsor fails to adequately manage the property and the project lender forecloses and assumes title, the investor will face the loss of the invested capital, the recapture of a portion of the LIHTC previously claimed, and the loss of access to the future stream of credits. While risk is inherent to all passive real estate investments, the costs that a tax credit investor faces due to the recapture and loss of credits exceed those faced in conventional real estate investments.

The recapture of LIHTC claimed is calculated as the difference in the amount of credits that would have been available if they had been earned over a fifteen-year period and the amount claimed according to the ten-year schedule. For example, if the annual credit amount available to the investor is $75,000 and the project is foreclosed upon after the fifth year of the credit period, then the credit amount claimed would have been $375,000. Nevertheless, $125,000 of that credit amount would be subject to recapture, according to the calculations in Table 2.

Table 2. Calculation of Tax Credit Amount Subject to Recapture

Annual Tax Credit Amount	$75,000
Total Tax Credit Amount Earned Over Ten Years	$75,000 x 10 = $750,000
Tax Credit Amount Earned Annually Over 15 year Compliance Period	$750,000 / 15 = $50,000
Tax Credits Claimed in Five Years	$75,000 x 5 = $375,000
Tax Credit Earned at Recapture Event	$50,000 x 5 = $250,000
Amount Subject to Recapture	$375,000 - $250,000 = $125,000

Causes of Loss of Credit

Over Income Tenants

A loss of credits, and even recapture, can occur when over income tenants are housed in tax credit units, or when tenant income certifications are not done correctly. Given that units with over income tenants are not eligible for inclusion in tax credit basis, every year that one or more units are occupied by over income tenants, a proportional amount of annual credits is lost. If the over income or incorrectly income certified tenant occupies a unit during the first tax credit year, then that unit will be ineligible for credits for the remainder of the credit period.

Failure to Market and Rent Units

Vacancies and rent levels present another risk to the tax credit investor. Projects that fail to successfully market their units and are unable to meet operating expenses and debt service requirements have a high potential for failure. Failure leads to a loss of future LIHTC and possible recapture of credits previously claimed. For all these reasons, cautious investors undertake rigorous due diligence reviews prior to making a binding investment commitment. Due diligence typically looks at the sponsor's qualifications to complete the development and manage the property within the tax credit rules. Additionally, due diligence will carefully examine the market demand for the proposed project and the projected operating economics and financing plan.

B. Risks to the Sponsor

Tax credit projects entail complex development and property management practices. Such complexity increases risks to project sponsors. During the development period, the sponsor is responsible for securing the tax credit allocation, achieving a carryover of the credits, securing an audit of the development costs, as well as the final allocation of credits evidenced by IRS Form 8609. During the operating period, the sponsor is responsible for property management that complies with all tax credit rules, including income certifications and rent setting.

1. Fiduciary Responsibility and Loss of Control

The sponsor takes on a fiduciary responsibility to the investor to protect the investor's interest in the asset (the project) and in the flow of tax benefits. At the same time, the sponsor losses control over the property as a result of the ownership structure created for the sale of the LIHTC. Typically, the sponsor will be unable to sell or refinance the project, incur additional debt, make significant capital improvements, or settle significant insurance claims, without the investor's approval.

2. Increased Development and Operating Costs

Tax credit financing also brings with it additional development and operating costs. Legal and accounting fees are increased by the ownership structure and the additional requirements of the LIHTC. Transaction or syndication costs related to securing the equity investor reduce the net capital available (although equity pricing is usually stated at the net to the project). The soft money invested, such as NYS Housing Trust Fund or HHAP funds, must be provided as a loan and not a grant in order to maintain the tax credit basis. This debt burden, while typically set at 1% interest only, does increase the rent levels. Other operating costs include a tax credit monitoring fee charged by DHCR (equal to 0.5% of the annual restricted rents), and increased audit and tax preparation fees resulting from the limited partnership structure.

Due to the risks and additional costs associated with tax credit projects, sponsors are encouraged to look at LIHTC as a component of project financing only when the scale of the project makes their utilization cost-effective. While there are no fixed rules on scale, projects with total development budgets of less than $1 million will usually not be cost-effective.

10. CASE STUDIES ON SPECIAL NEEDS LIHTC PROJECTS

A. Background

For this section we compiled eight case studies of projects that have used LIHTC to create assisted living housing and housing for homeless and developmentally disabled populations. We use these case studies to illustrate how organizations have used LIHTC to provide housing for special needs populations, and to describe the supportive services they provide through partnerships with other groups or through additional funding sources.

The case studies were selected with help from DHCR, the Local Initiatives Support Corporation, and the National Equity Fund. Project sponsors were interviewed by phone and asked to complete a written questionnaire. The organizations contacted include established nonprofit housing developers with experience using the LIHTC Program in both urban and rural locations in the states of New York, Massachusetts, Rhode Island, New Jersey, and Michigan.

Through the survey we gathered information on the project, its financing, the populations served, the supportive services provided, and how they are paid for. The conversations with project sponsors were used to identify challenges in using LIHTC for special needs housing projects and to solicit general recommendations on developing these kinds of projects with the LIHTC Program for the first time.

B. Case Studies

1. HOUSING FOR HOMELESS POPULATIONS

BRUCE KNOWLES DEVELOPMENT

Project Information
Westhab, Inc., a large provider of emergency, transitional and permanent housing and related services in Westchester County, recently completed the Bruce Knowles Development, located in southwest Yonkers. Westhab partnered with the National Equity Fund to utilize the Low-Income Housing Tax Credit Program to develop two new 12-unit buildings. The project was placed in service in 1999, and was built on vacant land acquired through purchase and donation. The two buildings consist primarily of two-bedroom apartments. Each building has a laundry room and off-street parking. Westhab is the general partner, providing housing management and supportive services for the project. The organization will take over ownership of the complex at the end of the 15-year tax credit compliance period.

Seven of the 12 units in each building have been set aside for formerly homeless families. Households are drawn from Westhab’s shelter system, and must have incomes below 60% of the Area Median Income. Rents are based on 30% of household income and are capped at $1,000 per unit. Only 6 of the 14 formerly homeless families living in the complex are on public assistance. The project is fully rented and no occupancy problems are anticipated due to high demand.

Financing
Total project costs were $4 million, and financing included Low-Income Housing Tax Credits at the 9% rate and Homeless Housing Assistance Program funds from the NYS Department of Social Services. The project was eligible for the 30% bonus in the calculation of LIHTC due to its location in a Difficult Development Area. Operating costs are covered by rents and by the operating and replacement reserves set up with LIHTC equity.

Sources of Funds	**Amount**
Tax credit equity	$2,376,776
Homeless Housing Assistance Program	$2,059,871
Total Sources	**$4,436,647**

Supportive Services
Supportive services provided to formerly homeless families include case management and a part-time tenant organizer. Case managers provide varying degrees of support, including monthly visits to facilitate the transition to permanent housing, and linking tenants to Westhab's employment and training programs. The tenant organizer is in charge of developing a tenant and neighborhood block association to empower residents to advocate for improved services from the city. These tenant organizations also provide a valuable resource for identifying and addressing potentially detrimental issues emerging in and around the complex. Services are financed through a portion of the Homeless Housing Assistance Corporation grant that Westhab receives annually for all its projects.

WARREN STREET SRO

Project Information
The Warren Street SRO is a newly constructed apartment building in Brooklyn, New York, which was sponsored by the Fifth Avenue Committee, Inc. (FAC) and Community Access, Inc. The project consists of 67 studio apartments with full kitchens and bathrooms and one superintendent unit. Project residents are homeless, elderly, and low-income individuals. FAC and Community Access, Inc. are co-general partners in the 551 Warren Street Limited Partnership, the entity that owns the project. FAC provides property management for the project and Community Access provides supportive services. The project involved a lengthy negotiation to secure the ownership of seven adjacent sites.

Half of the Warren Street studios have been set-aside for homeless individuals referred to the project by the New York City homeless shelter system. The remaining units are available to low-income single persons living in the neighborhood. There is also a 7-unit set-aside for the elderly. All units are rented to individuals with incomes at or below

50% of the AMI. Rents range from $250 to $375 per unit, and cannot be higher than 30% of a tenant's income. Units rented to individuals coming from the shelter system have Shelter Plus Care funding attached. During the initial rent-up period, the project received 500 applications for the 67 studios available.

Financing
Total project costs were approximately $8.7 million. The project used LIHTC at the 4% rate, including a 30% bonus due to its location in a Difficult Development Area. Funding sources included the NYC SRO Loan Program, LIHTC, the HUD Supportive Housing Program, and the NYC Division of Homeless Services.

Sources of Funds	Amount
Tax credit equity	$2,400,000
NYC SRO Loan Program	$5,500,000
HUD Supportive Housing Program	$690,000
NYC Division of Homeless Services	$100,000
Total Sources	**$8,690,000**

The developer's fee obtained from the project was used to finance the following items:

- Daily construction monitoring
- A financial consultant for the predevelopment phase
- Establishment of a social service reserve
- Administrative support for FAC and Community Access

Supportive Services
Community Access is employing five caseworkers, including a supervisor, for the first three years of operation of the project. The project offers job training, individual casework, special needs assistance, and referrals to outside services. Services are being financed by a three-year Supportive Housing Program grant from HUD of $1.6 million. In the fourth year, the general partners will use the social service reserve funded from the developer’s fee to continue financing supportive services. The cost of services is not included in project rents. In order to comply with LIHTC rules, services are optional and available to all tenants upon request.

2. HOUSING FOR PERSONS WITH DISABILITIES

PROJECT FREEDOM

Project Information
Project Freedom, located in Hamilton Township, New Jersey, will include 40 one-bedroom and 8 two-bedroom apartments, in townhomes constructed in a suburban location. The nonprofit sponsor, Project Freedom, Inc., was established in the 1980's as a service provider for developmentally disabled children and their families. The organization developed a housing project in the early 1990's that generated an enormous

waiting list and the impetus to launch the current project. The project has closed on its financing and construction will begin in mid-2000.

All tenants will be developmentally and/or physically disabled individuals with incomes below 50% of the Area Median Income. It is expected that residents' needs will vary widely, from those needing minimal assistance to those needing 24-hour care. Project tenants will come mainly from the organization's waiting list, and from a 25% set aside for developmentally disabled persons referred to the project by state agencies, such as the Division of the Developmentally Disabled (part of the New Jersey Social Services Agency). Referrals are also expected from Project Freedom’s extensive network of service, housing and advocacy organizations throughout the state. Rents will be $471 for one-bedrooms and $504 for two-bedroom apartments. Besides the rent, tenants will pay a utility allowance based on HUD's utility allowance schedule ($54 for one-bedrooms and $72 for two-bedrooms).

Financing

Total project costs are approximately $6.7 million. Project financing involves a wide range of funding sources, as shown in the table below.

Sources of Funds	**Amount**
Tax credit equity	$3,800,000
Hamilton Township	$240,000
County HOME funds	$320,000
State of New Jersey Balanced Housing Program	$1,150,000
Federal Home Loan Bank Affordable Housing Program	$287,000
State loan	$300,000
Developer equity	$600,000
Total Sources	**$6,697,000**

The project received tax credits at the 9% rate. The New Jersey Balanced Housing Program loan was provided by the state as soft debt. The additional $300,000 in state funds were secured as an amortizing loan to finance construction cost overruns. The organization is using part of the developer's fee to provide equity to the project, and the remainder to pay for predevelopment expenses and staff time used to develop the project. The regulatory agreement for the tax credits involves a thirty-year extended compliance period, with 25% of the units set aside for special needs tenants for 45 years.

Operating expenses will be covered by project rents. The project was set up with a $225,000 operating reserve. Any extra cash flow generated during the initial years of operation will be deposited into the operating reserve. It is anticipated that expenses will increase with time, forcing the project to use the reserve to continue funding the operation.

Supportive Services

Project Freedom provides services to all its tenants, including transportation, recreation, tenant associations, and linkages with case managers. Some services, such as transportation and tenant organizing, have been built into the project and can be used by the tenants on an optional basis at no cost. These services are covered by project rents. The project includes a property manager/social service coordinator who provides an initial evaluation of the tenants' needs and coordinates a network of support.

Supportive services are not required for occupancy and each tenant may develop his or her own customized bundle of services. Tenants referred to the project by the Division of Developmentally Disabled under the 25% set aside receive services directly from the agency. These services range from a personal assistant to help getting dressed in the morning, to full-day supervision or an as-needed emergency call. Medicaid-eligible tenants receive their services directly through Medicaid and can select their own service provider.

ELIZABETH BLACKWELL APARTMENTS

Project Information

Elizabeth Blackwell Apartments is a project currently under construction in Geneva, New York, a city south of Rochester. The project involves the reuse of a former YMCA building, which included commercial uses on the first floor. The project will have 20 one-bedroom apartments for developmentally and physically disabled individuals, and commercial space leased to the Boys and Girls Club and a construction company.

The project is being developed by Castle Street Housing Limited Partnership. The general partner is Equity Providence-Capital Street Housing, Inc, a subsidiary of Providence Housing Development Corporation. Providence Housing is a nonprofit organization based in Rochester, which was created five years ago by Catholic Charities to develop affordable housing for special needs, elderly and families in the twelve-county area around Rochester.

Tenants for the Elizabeth Blackwell project will be referred by social service agencies, primarily from Ontario, Monroe, Wayne and Seneca counties. Rents have been seen at $365 a month, and it is anticipated that all tenants will pay less than 30% of their income for rent. Construction should be completed by the end of 2000.

Financing

The total cost of the project is approximately $2.9 million. The project used LIHTC at the 9% rate and received a 30% bonus due to its location in a qualified census tract. The funding sources for the project are shown in the table below. Providence Housing is using part of the developer’s fee to cover construction and development costs, and the remaining portion to cover operating costs.

Sources of Funds	**Amount**
Tax credit equity	$1,900,000
NYS Housing Trust Fund	$646,000
Federal Home Loan Bank	$110,000
Developer equity	$150,000
Jobs for Geneva City Revolving Loan Fund (for the commercial portion)	$129,500
Total Sources	**$2,935,500**

Supportive Services

As the housing manager, Providence Housing will provide a part-time property manager in charge of building maintenance and of organizing a tenant association and activities for the residents. The project will not provide supportive services directly to the tenants. Nevertheless, tenants will have to demonstrate that they have the necessary support to live independently. Therefore, it is expected that the referring agency will provide case management and other ancillary services necessary for the referred tenant. These services will be financed by the NYS Developmentally Disabled Service Office, SSI, and funds from the United Way, among others.

Catholic Charities Community and Residential Services Program will be referring six tenants to the project through a memorandum of understanding with Providence Housing. It is expected that similar memoranda of understanding will be developed with other referring agencies, to specify procedures regarding the delivery of services to the tenants.

ALLEGAN COUNTY SUPPORTIVE HOUSING DEMONSTRATION PROGRAM

Project Information

This Demonstration Program is an outgrowth of the Allegan County Supportive Housing Corporation in Michigan. The project was developed as scattered-site supportive housing by Heritage Homes, Inc. Management, the for-profit subsidiary of Heritage Homes, a nonprofit housing and service provider. The project was developed in three different municipalities in Allegan County: two sites in the City of Allegan, two sites in the City of Fennville, and one site in the Village of Douglas. The 47-unit project is fully occupied with 52 households on a waiting list.

The project was placed in service in December of 1999 and January of 2000, and consists of 14 new buildings. The unit mix contains 4 one-bedrooms, 39 two-bedrooms, and 4 three-bedrooms. Rents are $309 for a one-bedroom, $363 for a two-bedroom duplex, $371 for a two-bedroom apartment, and $409 for a three-bedroom unit. The project is intended to serve a wide variety of disabled and special needs populations in the area, and has been set up for approximately one third developmentally disabled, one third mentally disabled, and the remaining as a mix of homeless, physically challenged, and individuals with AIDS. The project targets 5 units at 60% of AMI, 20 units at 40% of AMI, and the rest at 50% of AMI. Currently, the average household income in the project is 32% of

AMI. Tenants are referred by the Allegan County Supportive Housing Consortium, a consortium of social service agencies.

Financing
The project cost approximately $5.18 million and included financing from the Federal Home Loan Bank, the Michigan State Housing Development Authority, LIHTC, and a contribution from the developer. The project received tax credits at the 9% rate. Heritage Homes used the developer's fee to retire debt, pay for predevelopment costs, and establish operating reserves on preexisting projects. A breakdown of the sources of funds is shown on the table below.

Sources of Funds	**Amount**
Tax credit equity	$2,131,000
Federal Home Loan Bank	$124,000
Michigan State Housing Development Authority, 1%, 30 years	$2,800,000
Developer equity	$125,000
Total Sources	**$5,180,000**

Supportive Services
Supportive services are provided according to the individual needs of each client. There is a wide range of need, from 24 hours live-in supervision to help with personal budgeting. Services are coordinated by Heritage Homes, Inc. Management in conjunction with the Allegan County Supportive Housing Consortium, which helps develop individual service plans. Each service provider has a memorandum of understanding with Heritage Homes, Inc., detailing the conditions and terms for providing services to the tenants that need them.

The cost of services used by the tenants is covered by the same agencies that provide those services. Additionally, the Allegan County Supportive Housing Consortium received a HUD Shelter Plus Care grant of $300,000 and a Family Independence Agency grant of $50,000, which will be used to provide some of the services the tenants will need.

3. ASSISTED LIVING

FOREST FARM ASSISTED LIVING CENTER

Project Information
The Forest Farm Assisted Living Center is a 50-unit assisted living project located in Middletown, Rhode Island. The project was sponsored by the Church Community Housing Corporation (CCHC), a nonprofit developer, and Forest Farm Health Care Center, Inc., a nursing home operator. The Center is adjacent to a 67-bed nursing home, which is owned and operated by Forest Farm Health Care Center. The project is a two-story building. All units are one-bedrooms with full bathrooms and kitchens.

The project has only five market-rate units that rent for $638 a month. Among the remaining 45 LIHTC units, 10 have no subsidy and 30 have Medicaid/enhanced SSI assistance. These 40 units rent for $495 a month. The remaining five LIHTC units have Medicaid/SSI assistance and a HOME subsidy, and their rent is $445 a month. Tax credit units are reserved for tenants at or below 60% of the Area Median Income. Market-rate units have income limits set at 80% of AMI.

Financing

The project was financed with 9% tax credits, CDBG and HOME funds, and two mortgages from the Rhode Island Housing and Mortgage Finance Corporation (RIHMFC), the state's housing credit agency. The sources of funds are shown on the table below.

Sources of Funds	**Amount**
City CDBG	$100,000
RIHMFC: HOME	$300,000
RIHMFC: mortgage, 30 years, 8% interest	$1,025,000
RIHMFC: soft second mortgage, 30 years	$548,006
Tax credit equity	$4,289,721
Total Sources	**$6,262,727**

The project received from RIHMFC $470,000 in 1997 tax credits and $85,000 in 1998 tax credits, for a total of $555,000. The tax credits were syndicated to the National Equity Fund for $4.2 million. HOME funds were provided to the project as a deferred payment second mortgage, with a 30-year term and 5.5% interest. The project also received a pre-development loan of $400,000 from the Local Initiatives Support Corporation (LISC).

Supportive Services

Services to project tenants are provided by Forest Farm employees from the adjacent nursing home. The Center offers three levels of services, which are optional:

- Monthly meal package: three daily meals for $182
- Basic services package: includes case management and coordination, three meals a day, personal care assistance, housekeeping, linen service, transportation, and community activities for a monthly charge of $580 for tax credit only units and $1,025 for Medicaid and market-rate units.
- Additional services: laundry, adult daycare and some medical services are available at the Center at an additional cost.

The cost of services is financed through Medicaid and SSI payments, as well as by payments from tenants with assets.

VISITING NURSE ASSISTED LIVING RESIDENCE

Project Information

The Visiting Nurse Assisted Living Residence is a 97-unit assisted living project located in Somerville, Massachusetts. The project was sponsored by the Visiting Nurse Foundation, Inc., a private nonprofit corporation, and is being managed by Managed Health Resources. As the developer, the Visiting Nurse Foundation demolished an old industrial building and cleaned up a brownfield site to build the Residence. The project is a three-story wood frame building located in a residential area. All units are one-bedrooms with full bathrooms and a kitchenette.

The project has 24 market-rate units, 24 units for tax-credit eligible households, and 49 units for very low-income tax credit-eligible households that qualify for coverage under Medicaid. Rents, meals and services for tax credit units are $1,878 per month. Rents are set at the maximum tax credit levels, with the remaining portion covering services. The cost of the package for market-rate tenants is $2,600. Tax credit units are targeted at tenants with maximum incomes of 60% of the AMI, and there are no income limits for market-rate units.

Financing

The project was financed with 9% tax credits, city and state funds, a loan from the Visiting Nurses Association, and general partner equity. The sources of funds are shown on the table below.

Sources of Funds	**Amount**
MA Housing Partnership Fund, 30-year first mortgage, 7.47%	$5,400,000
MA Housing Partnership Fund subsidized advance through the FHLB, 30 years, 4.45%	$1,250,000
MA Department of Housing and Community Development Home Loan, 30-year shared second mortgage, 8%	$500,000
City HOME loan, 30-year shared second mortgage, 8%	$250,000
Somerville Affordable Housing Trust third mortgage, 20 years, 8%	$150,000
Visiting Nurses Association Loan, 30 years, 8%	$164,000
Deferred developer's fees	$542,252
General partner equity	$250,000
Tax credit equity	$5,950,000
Total Sources	**$14,456,252**

The project's tax credits were syndicated to the National Equity Fund. The Massachusetts Housing Partnership Fund mortgage and subsidized advance were structured for 30 years with a 20-year balloon payment. The required payment for the Somerville Affordable Housing Trust loan is only 20% of cashflow.

Supportive Services

Meal and service packages are optional to tenants and are purchased separately. Services to project tenants are provided by Residence staff. These services include assistance with the activities of daily living and the instrumental activities of daily living, assistance with self-administered medication, three meals a day, linen service, transportation, and social activities. These services are contracted by the Residence from the Visiting Nurse Association of Eastern Massachusetts and Managed Health Resources, but tenants can also contract with a provider of their own.

In addition to Supplemental Security Income, two state programs help maintain units affordable to very low-income residents. These programs are the Group Adult Foster Care (GAFC) and the SSI Category G program.

CHRISTOPHER HOUSE OF WEBSTER ASSISTED LIVING RESIDENCE

Project Information

The Christopher House of Webster Assisted Living Residence is a new construction, three-story building on the campus of the Hubbard Hospital in Webster, Massachusetts. The 83-unit project contains 12 one-bedrooms, 20 alcove apartments, and 51 studio apartments. All apartments are equipped with a full-size refrigerator and a microwave for in-home cooking. Instead of a large dining facility, the project has several small dining areas that provide a comfortable atmosphere and are more conveniently located, encouraging tenants to socialize.

The goal of the project is to provide a continuum of care at one site, the Hubbard Hospital campus. The Christopher House project provides acute care services, transitional care services, long-term care services and now assisted living services. Christopher House Assisted Living, Inc., and Hubbard Health Systems, two private nonprofit organizations, are the general partners on the project.

The Residence is a mixed-income project. 43 units are targeted to very low-income residents (at or below 50% of AMI), with rents of $446 for a studio and $478 for a one-bedroom. 20 units are targeted to low-income residents (at or below 60% of AMI), with rents of $460 for a studio and $495 for a one-bedroom. The remaining 20 units are targeted to moderate-income residents (at or below 80% of AMI), with rents of $714 for a studio and $816 for a one-bedroom. Very low-income residents qualify for Medicaid.

Financing

The project was financed with 9% tax credits, and had a total cost of $6.88 million. Funding sources included a construction loan from Key Healthcare Finance, and a Community Development Trust loan provided by the Local Initiatives Managed Assets Corporation (LIMAC), an affiliate of LISC. This loan was structured as an 18-year permanent loan with a 25-year amortization schedule, and a rate 260 basis points over the 10-year U.S. Treasury. The project's tax credits were syndicated to the National Equity Fund.

Sources of Funds	Amount
Community Development Trust	$5,200,000
Tax credit equity	$1,680,000
Total Sources	**$6,880,000**

The developer's fee was used to cover the cost of pre-market studies and to set up an operating reserve.

Supportive Services
All services provided at Christopher House are optional and provided through a separate agreement with the tenant. Tenants selected for the project are carefully screened to ensure that the assisted living setting with optional services is appropriate for them. The facility focuses on individuals who need assistance with one to three activities of daily living. The optional basic service package offered to residents includes personal care services, three meals a day, weekly maid service, and laundry service. The cost to low- and very low-income residents is $33.70 per day, or $1,028 a month. The cost for market-rate residents is $61.50 per day or approximately $1,875 per month.

Residents of tax credit units that are not Medicaid-eligible are expected to pay for services out of their assets. For very low-income residents, services are paid for out of a combination of federal and state funding created to make the assisted living model affordable. These programs include SSI, the Massachusetts Group Adult Foster Care (GAFC), and the Massachusetts SSI Category G program. Both GAFC and SSI Category G provide direct payments to the nonprofit organization for making services available to qualified tenants.

C. Issues Arising from the Use of LIHTC for Special Needs Projects

The following section was drawn from conversations with the sponsors of projects included as case studies, as well as with other developers of supportive housing projects in New York and other states whose projects were not included in this section. From their comments, we tried to identify trends in the field of special needs projects, obstacles for developing these kinds of projects in New York State, and recommendations for supportive housing providers who are using tax credits for the first time. A future study that takes into account these comments with quantitative data gathered from DHCR's database of projects, the IRS Tax Credit Reporting systems, and the upcoming census data would provide valuable insight into the issues regarding the use of LIHTC for supportive housing projects.

1. Issues Arising from the Use of LIHTC for Special Needs Housing

Two trends seem evident among special needs housing providers and the populations they serve. The first is the aging of the population, which is increasing the need for supportive housing projects for seniors and for the frail elderly. The second is a tendency among special needs housing organizations to provide more independent living opportunities, as opposed to group homes and shared apartments. This is particularly evident in the senior housing field, where assisted living is becoming a popular model to increase the independence of aging seniors and provide care at a lower cost than the traditional nursing home setting.

In spite of this trend, there seem to be few or no assisted living projects that use LIHTC in New York. This is also the case with LIHTC projects that serve developmentally disabled populations. New York, particularly New York City, has developed good models for providing formerly homeless individuals with permanent and transitional housing options using the LIHTC Program. Supportive housing projects that serve the formerly homeless appear to have more resources at the federal, state, and local levels to provide both housing and services than do projects that serve the frail elderly or the developmentally disabled. Nevertheless, the demand for supportive housing that serves these two populations remains high.

Developing assisted living with LIHTC has proved challenging. Organizations that are not home health care agencies should be encouraged to form alliances with home health care agencies that can access Medicaid funds through the NYS Limited Home Health Care Service Agency. Moreover, the restrictions on licensed facilities that are eligible for Medicaid reimbursement must be reconsidered, to ensure their compatibility with the requirements of the LIHTC Program.

One of the main obstacles of implementing special needs housing projects with LIHTC in New York State is the fact that these projects compete directly with affordable housing projects that do not provide services. While the former entail a higher risk due to the populations served and the greater need for resources to provide supportive services, the latter are simpler projects with lower risk levels. This difference is exacerbated in high-income areas, such as Westchester County, where many affordable housing projects serve middle-income households that cannot afford homeownership because the real estate market is so tight. Affordable housing developed in these locations can use conventional bank financing, and is much more stable and easier to manage and maintain than housing that serves low-income individuals with special needs.

Compounding this problem is the fact that, since competition for LIHTC has become so fierce, a developer must preferably have completed architectural feasibility studies and secured all other sources of funding to be competitive. Achieving this level of "readiness" requires considerable expenditures prior to applying for tax credits. This represents a real gamble for nonprofit organizations that have no assurances they will be successful in securing tax credits for their projects, even after spending considerable resources.

A third problem facing special needs housing providers is that these projects are more time- and labor-intensive to develop and manage, since they require weaving together a wide range of funding sources with different restrictions and regulations. Regulations are not necessarily compatible among funding programs, and each program adds its own monitoring and reporting requirements to the nonprofit sponsor. Projects receiving operating subsidies also face a mismatch between the terms of the subsidy and the affordability requirements of the LIHTC Program. For example, rent subsidies can last only 5 to 10 years, while projects must remain affordable for 15, 30, or more years.

In growing metropolitan areas, the difficulty of working with multiple funding sources is compounded by the need to move quickly to secure a site and project funding, amid rapidly escalating land and construction costs. The funding needs of special needs housing projects make it harder for their sponsors to move quickly in the development process.

Finally, supportive housing projects face uncertainty regarding the duration of their service funding sources. Many of these projects cannot be operated without the provision of services, since tenants sometimes need the services to lead their daily lives. Therefore, the possibility of funding cuts or program terminations represents a real threat to these organizations.

2. Recommendations for First-Time Users of LIHTC for Supportive Housing

The organizations contacted indicated that the key benefit of the LIHTC Program is that it allows the capitalization of operating and replacement reserves, as well as the payment of a higher developer's fee, which are rarely covered by a traditional lender. For a project with very low rents, the LIHTC Program can cover an organization’s operating losses through reserves derived from the developer's fee, to a degree that most city and state programs cannot.

Due to the complexity of the LIHTC Program, most respondents strongly recommended that first-time users of the Program procure technical assistance and work with consultants. Consultants can assist in developing a viable project, work out the underwriting details, secure financing, and oversee the complex legal requirements for accessing tax credits. One option is seeking assistance from nonprofit organizations like the Local Initiatives Support Corporation (LISC) and the National Equity Fund (NEF) that work with communities to expand the capacity of their nonprofit housing developers.

Organizations must keep in mind that the LIHTC Program comes with a lot of responsibility. Groups that develop affordable housing projects using LIHTC need to view tax credit investors as partners. Their relationship will be a 15-year partnership, since the developer will have to report to the investor and the investor will monitor the project to make sure that the investment is secure.

Other recommendations included:

- Meeting with other nonprofits in adjacent counties to share knowledge and experience
- Attending conferences, seminars, and workshops on the LIHTC Program, such as:
  - NYS Rural Housing Coalition Annual Conference
  - NYS Neighborhood Preservation Corporation Annual Conference

- Periodical seminars on the frequently changing regulations of Section 42 offered by the Institute for Professional Education and Development (IPED), a professional training organization created by attorneys at Peabody and Brown
- Introduction to Tax Credits, an introductory class to the LIHTC Program offered by the Lawyer's Alliance
- Training Institutes offered three or four times a year by the Neighborhood Reinvestment Corporation
- Basic and follow-up courses on using tax credits offered by the Pratt Institute Center for Community and Environmental Development (PICCED)

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Note: Some of these publications might be available at the DHCR library. For more information, check the Division's web page at www.dhcr.state.ny.us

The following websites provide varied information on the LIHTC Program:

National Housing and Rehabilitation Association
www.housingonline.com
This site lists monthly tax credit rates, Difficult Development Areas, and qualified census tracts. It also provides information on tax credit compliance and links to other sites related to the Program.

Novogradac's Affordable Housing Resource Center
www.novoco.com/resource.htm

National Council of State Housing Agencies
www.ncsha.org/
This site provides information about the LIHTC Program under the section "What Housing Finance Agencies Do".

GLOSSARY

Most terms were taken from the glossary included in DHCR's Capital Programs Manual.

Annual Credit Amount	Qualified basis multiplied by Credit rate.
Applicable Fraction	Percentage of the development composed by qualified low-income units. It is based on the lesser of unit ratio or floor space ratio.
Area Median Income	The HUD Area Median Incomes are updated annually. As applied to tax credit projects, the AMI is adjusted for family size.
Carryover Allocation	Tax credits are allocated to projects from the state credit ceiling available to each state by calendar year. Tax credit projects which are not completed in the calendar year in which the credits are allocated may carry over that allocation for up to two additional calendar years if the owner's basis in the property at the end of the allocation year is at least 10% of the total reasonably expected basis in the project.
Certificate of Incorporation	Legal document filed with the State, which describes a corporation's legal organizational structure, as well as any amendments and restatements.
Certificate of Occupancy	Certificate issued by the building department of a local government, providing evidence that a building is ready and fit for occupancy, and free of building code violations.
Change Order	Order which authorizes changes or modifications to the construction work originally shown in contract drawings, plans, or specifications.
Common Areas	Land, improvements, and amenities for the benefit and use of all occupants, as well as the property owner, such as corridors, hallways, playgrounds, community rooms, management offices, and elevators.
Comparable Rent	The prevailing rent for comparable apartments in the same neighborhood, service area or market.
Compliance Period	Period during which projects must comply with the requirements of the LIHTC Program. The compliance period is fifteen years for projects that received 1990 and later tax credits. The extended use period involves an additional fifteen years, for a 30-year regulatory period.
Construction Award Agreement	Contract which documents the terms for development of the project and disbursement of the award proceeds.
Construction Loan	A short-term loan to cover a project's construction costs, with loan proceeds disbursed in periodical installments as work progresses.

Cost Certification	Accounting of actual project costs as expended for all project-related expenses from all funding sources.
Credit Ceiling	Annual amount of LIHTC received by NYS and allocated according to Qualified Allocation Plans.
Credit Reservation	The credit reservation serves as the preliminary assignment of tax credits to a qualified low income project. It contains deadlines for closing on construction financing, obtaining permanent financing commitments, starting construction, and submitting the remaining documents necessary to issue an allocation of LIHTC.
Depreciation	An asset's deemed loss in value over a period of time.
Difficult Development Areas (DDA)	Counties designated by HUD as having high construction costs, land and utility costs, relative to the AMI. Projects located in these counties can increase their eligible basis by 30%. DDA's are published annually by HUD.
Due Diligence	Review performed by the syndicator of a tax credit project to assess the project's feasibility. Includes information on local approvals, environmental review, project funding, market demand, and capacity and experience of the sponsor.
Eligible Basis	Development expenditures that are eligible for obtaining tax credits.
Extended Use Agreement	Agreement between DHCR and the property owner that extends the use of the tax credit property beyond the initial 15-year compliance period. The agreement is a restrictive covenant that runs with the land.
Fair Market Value	The highest price a property would bring if offered for sale in a competitive market for a reasonable time period, with both buyer and seller being fully aware of all the property's present and future uses without being compelled to conduct the transaction.
Firm Commitment	A lender's irrevocable agreement to loan a specific sum of money at a specified interest rate for a definite term, subject to certain conditions.
General Partner	A natural person, partnership, corporation or other person or entity in its own or any representative capacity who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement.
Hard Costs	Costs incurred by the contractor in providing all labor, materials, equipment, general conditions, overhead and profit for the construction of a project.
Housing Credit Agency	An agency legally authorized to allocate and award tax credits to eligible projects.
Interim Loans/ Financing	Financing provided for a limited period, to be "taken out" by permanent financing or equity.

Investor Limited Partner	An investor who is admitted into the ownership of a project through a Limited Partnership Agreement, typically acquiring up to 99.9% of the interest without getting involved in the daily management of the project. Its main role is to contribute money into the project in exchange for claiming the tax credits, and monitor a project's compliance with tax credit requirements.
Letter of Credit	A bank's agreement or commitment, made at a customer's request, to honor a third party's demands of payment upon compliance with the conditions specified in the letter of credit.
Limited Partnership	A partnership formed by two or more persons under Articles 8 or 8A of the NYS Partnership Law, having one or more general partners and one or more limited partners.
Limited Partnership Agreement	Document that defines and governs the business relationship between the general partner and the investor limited partner.
Management Agent	The company or individual who markets, leases, manages, and maintains the project.
Management Agreement	A contract between a project owner and the management agent, which establishes the agent's obligations, compensation, scope of authority, methods of paying project expenses, and so on.
Market Rent	The rent level achieved in housing market area for comparable units which are not subject to rent restrictions.
Moderate Rehabilitation	A project which has a total development cost of $25,000 per unit or less.
Operating Expenses	Periodic expenses which are essential for a project's continuous operation and maintenance. Operating expenses may be fixed, such as property taxes and insurance, or they may be variable, such as utilities or payroll. Operating and replacement reserve contributions are operating expenses; mortgage principal and interest, and depreciation are not.
Partnership Expense	Any expense incurred by the partnership that is paid from the proceeds of syndication of LIHTC which are not allocated to developer's fee or syndication cost.
Permanent Financing	A long-term loan often used to "take out" the interim lender who loaned money to finance the construction of a major project.
Placed in Service Date	Date when the building is ready and available for occupancy, usually taken as the date when a Certificate of Occupancy is issued.
Predevelopment Costs	Costs which are incurred in conjunction with, but prior to, the actual commencement of the project's construction, such as site option costs, site carrying charges, architectural and engineering fees, and appraisal fees.

Present Value	The value today of payments to be made or received in the future.
Private Placement	Transaction where a private corporation directly buys all of the tax credits provided by a low income housing project.
Public Assistance Level	Household income of 30% of the AMI or less.
Qualified Allocation Plan	A Plan prepared and adopted by a Housing Credit Agency pursuant to IRC Section 42 that establishes the criteria and preferences for allocating LIHTC.
Qualified basis	Eligible basis multiplied by the applicable fraction.
Qualified Census Tracts	Census tracts where 50% or more of households have incomes of less than 60% of the AMI. Projects located in qualified census tracts can increase their eligible basis by 30%. A list of qualified census tracts is published by HUD and updated every 10 years.
Right of First Refusal	Option granted to a not-for-profit sponsor to acquire the investor limited partner's partnership interest at the end of the 15-year tax credit compliance period.
Regulatory Agreement	Contract between NYS DCHR and the project owner that prescribes the terms under which the project will be owned and operated.
Regulatory Period	The period of time for which the project's Regulatory Agreement is in effect.
Rehabilitation	Restoration of a building to its former or improved condition, as when buildings are renovated or modernized. Rehabilitation usually does not alter a structure's basic plan or style, but may include some new construction, buildings, or additions.
Replacement Reserve	The amount set aside at the time of initial occupancy, or each month thereafter, for the future replacement of items including, but not limited to, flooring, plumbing systems, heating systems, security systems, electrical systems, roofs, and window and door units, as approved by DHCR.
Restricted Rent	The rent limitation for a dwelling unit for purposes of qualifying for LIHTC.
Shelter Allowance	The Department of Social Services' maximum rental allowance for persons receiving public assistance. The allowance is based on county of residence and family size.
Shelter Rent	The maximum rent which can be charged for units to be occupied by persons receiving public assistance, or who have incomes at the public assistance level.
Soft Costs	Costs, other than acquisition and construction/rehabilitation, which are incurred while holding unimproved property or during construction. Soft costs may include, but are not limited to, such

	items as carrying charges (interest, real estate taxes, and ground rents), professional service and audit fees, offering plan/prospectus costs, surveys, relocation expenses, insurance, assessment, mortgage insurance premiums, inspection, recording and filing fee, not-for-profit developer's allowance, FNMA/GHMA fee, mortgage recording tax, and title examination costs.
Subsidy	A grant made by a government or other entity to reduce the cost of housing to the occupant.
Substantial Rehabilitation	A project which has a per unit total development cost in excess of $25,000.
Syndication Cost	The costs of legal, marketing and syndicator fees necessary to sell partnership interest providing federal tax benefits through LIHTC.
Takeout Financing	Long-term permanent financing used to pay off a project's short-term construction loan. This term is used when a project's financing involves two lenders: the interim and the permanent lender. Prior to making a construction loan, an interim lender usually requires a commitment from the permanent lender to "take out" the interim lender when construction is completed, by taking over the mortgage as a permanent (long-term) investment.
Tax Credit	A dollar-for-dollar reduction in federal tax liability for parties that invest in low-income housing under the LIHTC Program.
Credit Rate	Rates calculated to reflect the present values of either 70% (9 percent rate) or 30% (4 percent rate) of qualified basis. These rates are adjusted monthly by the U.S Department of the Treasury, based on changes in federal borrowing.
Ten-Year Previous Ownership Rule	A provision of the tax credit regulations that states that buildings must not have changed ownership and been placed in service in the previous ten years, in order to be eligible for the acquisition tax credit. Certain exceptions apply.
Total Development Cost (TDC)	The sum of all eligible, necessary and reasonable construction/ rehabilitation, site acquisition, and soft costs for a project, excluding working capital and replacement and operating reserve costs.
Total Housing Expense/Cost	A household's total monthly expenditure for rent plus utilities.
Total Project Costs (TPC)	The sum of all eligible, necessary and reasonable acquisition, construction/rehabilitation, and soft costs for a project, as well as working capital and reserve fund capitalization costs, where applicable.
Turnkey Development Method	A method used to develop low-income housing in which the development of the project is handled by an experienced builder who, at the completion of the development phase, turns the project over to an experienced owner for operation and management. In some cases,

the builder and the owner may be the same entity.

Very Low Income	Households or persons whose incomes are equal to 50% of the AMI or less.
Working Capital Fund	A fund to be used for start-up expenses incurred in the first year after completion, including but not limited to, liability insurance, fidelity bond premiums, utility hook-up deposits, maintenance equipment, movable furnishings and equipment, and other initial project-related expenses, as approved by DHCR.

APPENDIX A

INCOME LIMITS

This appendix contains the 50% and 60% income limits for the LIHTC Program, effective March 9, 2000. The 50% income limits are taken from the HUD income charts. The 60% income limits are calculated as 1.2 times the HUD 50% income limits, and are based on the actual size of the household. The table below lists the counties contained in each of the metropolitan areas for the state.

Metropolitan Area	**Components**
Albany-Schenectady-Troy	Albany Schoharie Montgomery Rensselaer Saratoga Schenectady
Binghamton	Broome Tioga
Buffalo-Niagara Falls	Erie Niagara
Dutchess County	Dutchess County
Elmira	Chemung
Glens Falls	Warren Washington
Jamestown	Chautauqua
Nassau-Suffolk	Nassau Suffolk
New York	Bronx Kings New York Putnam Queens Richmond
Newburgh	Orange
Rochester	Genesee Livingston Monroe Ontario Orleans Wayne
Rockland County	Rockland County

Syracuse	Madison Onondaga Oswego Cayuga
Utica-Rome	Herkimer Oneida
Westchester County	Westchester County

INCOME LIMITS BY HOUSEHOLD SIZE (at 50% of AMI) **Effective 3/09/2000**

	HOUSEHOLD SIZE							
METROPOLITAN AREAS	**1PERSON**	**2 PERSON**	**3 PERSON**	**4 PERSON**	**5 PERSON**	**6 PERSON**	**7 PERSON**	**8 PERSON**
MSA: Albany-Schenectady-Troy	17,950	20,500	23,100	25,650	27,700	29,750	31,800	33,850
MSA: Binghamton	15,450	17,650	19,850	22,050	23,800	25,600	27,350	29,100
PMSA: Buffalo-Niagara Falls	16,400	18,750	21,100	23,450	25,350	27,200	29,100	30,950
PMSA: Dutchess County	20,850	23,850	26,800	29,800	32,200	34,550	36,950	39,350
MSA: Elmira	14,800	16,900	19,050	21,150	22,850	24,550	26,250	27,900
MSA: Glens Falls	15,100	17,300	19,450	21,600	23,350	25,050	26,800	28,500
MSA: Jamestown	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
PMSA: Nassau-Suffolk	26,800	30,600	34,450	38,250	41,300	44,350	47,450	50,500
PMSA: New York	19,650	22,500	25,300	28,100	30,350	32,600	34,850	37,100
PMSA: Newburgh	19,050	21,750	24,500	27,200	29,400	31,550	33,750	35,900
MSA: Rochester	18,350	20,950	23,600	26,200	28,300	30,400	32,500	34,600
AREA: Rockland County	28,850	32,950	37,100	41,200	44,500	47,800	51,100	54,400
MSA: Syracuse	16,450	18,800	21,150	23,500	25,400	27,250	29,150	31,000
MSA: Utica-Rome	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
AREA: Westchester County	29,100	33,250	37,400	41,550	44,850	48,200	51,500	54,850

INCOME LIMITS BY HOUSEHOLD SIZE (at 50% of AMI) Effective 3/09/2000

	HOUSEHOLD SIZE							
NON-METROPOLITAN AREAS	**1PERSON**	**2 PERSON**	**3 PERSON**	**4 PERSON**	**5 PERSON**	**6 PERSON**	**7 PERSON**	**8 PERSON**
Allegany County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Cattaraugus County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Chenango County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Clinton County	14,900	17,050	19,150	21,300	23,000	24,700	26,400	28,100
Columbia County	16,150	18,500	20,800	23,100	24,950	26,800	28,650	30,500
Cortland County	15,100	17,300	19,450	21,600	23,350	25,050	26,800	28,500
Delaware County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Essex County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Franklin County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Fulton County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Greene County	14,750	16,900	19,000	21,100	22,800	24,500	26,150	27,850
Hamilton County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Jefferson County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Lewis County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Otsego County	14,650	16,700	18,800	20,900	22,550	24,250	25,900	27,600
St. Lawrence County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Schuyler County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Seneca County	15,700	17,900	20,150	22,400	24,200	26,000	27,800	29,550
Steuben County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600
Sullivan County	15,800	18,050	20,300	22,550	24,350	26,150	27,950	29,750
Tompkins County	17,800	20,300	22,850	25,400	27,450	29,450	31,500	22,550
Ulster County	15,600	17,800	20,050	22,250	24,050	25,800	27,600	29,350
Wyoming County	14,600	16,700	18,750	20,850	22,500	24,200	25,850	27,500
Yates County	14,100	16,100	18,150	20,150	21,750	23,350	25,000	26,600

INCOME LIMITS BY HOUSEHOLD SIZE (at 60% of AMI) **Effective 3/09/2000**

	HOUSEHOLD SIZE							
METROPOLITAN AREAS	**1PERSON**	**2 PERSON**	**3 PERSON**	**4 PERSON**	**5 PERSON**	**6 PERSON**	**7 PERSON**	**8 PERSON**
MSA: Albany-Schenectady-Troy	21,540	24,600	27,720	30,780	33,240	35,700	38,160	40,620
MSA: Binghamton	18,540	21,180	23,820	26,460	28,560	30,720	32,820	34,920
PMSA: Buffalo-Niagara Falls	19,680	22,500	25,320	28,140	30,420	32,640	34,920	37,140
PMSA: Dutchess County	25,020	28,620	32,160	35,760	38,640	41,460	44,340	47,220
MSA: Elmira	17,760	20,280	22,860	25,380	27,420	29,460	31,500	33,480
MSA: Glens Falls	18,120	20,760	23,340	25,920	28,020	30,060	32,160	34,200
MSA: Jamestown	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
PMSA: Nassau-Suffolk	32,160	36,720	41,340	45,900	49,560	53,220	56,940	60,600
PMSA: New York	23,580	27,000	30,360	33,720	36,420	39,120	41,820	44,520
PMSA: Newburgh	22,860	26,100	29,400	32,640	35,280	37,860	40,500	43,080
MSA: Rochester	22,020	25,140	28,320	31,440	33,960	36,480	39,000	41,520
AREA: Rockland County	34,620	39,540	44,520	49,440	53,400	57,360	61,320	65,280
MSA: Syracuse	19,740	22,560	25,380	28,200	30,480	32,700	34,980	37,200
MSA: Utica-Rome	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
AREA: Westchester County	34,920	39,900	44,880	49,860	53,820	57,840	61,800	65,820

INCOME LIMITS BY HOUSEHOLD SIZE (at 60% of AMI) **Effective 3/09/2000**

	HOUSEHOLD SIZE							
NON-METROPOLITAN AREAS	**1PERSON**	**2 PERSON**	**3 PERSON**	**4 PERSON**	**5 PERSON**	**6 PERSON**	**7 PERSON**	**8 PERSON**
Allegany County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Cattaraugus County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Chenango County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Clinton County	17,880	20,460	22,980	25,560	27,600	29,640	31,680	33,720
Columbia County	19,380	22,200	24,960	27,720	29,940	32,160	34,380	36,600
Cortland County	18,120	20,760	23,340	25,920	28,020	30,060	32,160	34,200
Delaware County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Essex County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Franklin County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Fulton County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Greene County	17,700	20,280	22,800	25,320	27,360	29,400	31,380	33,420
Hamilton County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Jefferson County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Lewis County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Otsego County	17,580	20,040	22,560	25,080	27,060	29,100	31,080	33,120
St. Lawrence County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Schuyler County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Seneca County	18,840	21,480	24,180	26,880	29,040	31,200	33,360	35,460
Steuben County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920
Sullivan County	18,960	21,660	24,360	27,060	29,220	31,380	33,540	35,700
Tompkins County	21,360	24,360	27,420	30,480	32,940	35,340	37,800	40,260
Ulster County	18,720	21,360	24,060	26,700	28,860	30,960	33,120	35,220
Wyoming County	17,520	20,040	22,500	25,020	27,000	29,040	31,020	33,000
Yates County	16,920	19,320	21,780	24,180	26,100	28,020	30,000	31,920

APPENDIX B

MAXIMUM RENTS

This appendix contains the maximum rents for the 50% and the 60% income limits, effective March 9, 2000. These maximum rents are calculated based on the *imputed household size* illustrated in the table below, and on the household income for the *imputed household size*, as defined by the IRS. The maximum annual rent is equal to 30% of the annual income, and is then divided by 12 to obtain the maximum monthly rent.

To calculate the 60% maximum rents, we take the incomes from the HUD 50% limits, apply the *imputed household size*, and multiply by 1.2 to obtain the annual income at 60%.

Unit Size	Imputed Household Size
0 Bedroom	1 person
1 Bedroom	1.5 persons
2 Bedroom	3 persons
3 Bedroom	4.5 persons
4 Bedroom	6 persons
5 Bedroom	7.5 persons

MAXIMUM MONTHLY RENTS BY UNIT SIZE (for 50% income limits)

Effective 3/09/2000

AVERAGE HOUSEHOLD SIZE	**1**	**1.5**	**3**	**4.5**	**6**	**7.5**
	UNIT SIZE					
METROPOLITAN AREAS	**0B**	**1B**	**2B**	**3B**	**4B**	**5B**
MSA: Albany-Schenectady-Troy	448	480	577	666	743	820
MSA: Binghamton	386	413	496	573	640	705
PMSA: Buffalo-Niagara Falls	410	439	527	610	680	750
PMSA: Dutchess County	521	558	670	775	863	853
MSA: Elmira	370	396	476	550	613	676
MSA: Glens Falls	377	405	486	561	626	691
MSA: Jamestown	352	377	453	523	583	645
PMSA: Nassau-Suffolk	670	717	861	994	1,108	1,224
PMSA: New York	491	526	632	730	815	899
PMSA: Newburgh	476	510	612	707	788	870
MSA: Rochester	458	491	590	681	760	838
AREA: Rockland County	721	772	927	1,071	1,195	1,318
MSA: Syracuse	411	440	528	611	681	751
MSA: Utica-Rome	352	377	453	523	583	645
AREA: Westchester County	727	779	935	1,080	1,205	1,329

AVERAGE HOUSEHOLD SIZE	**1**	**1.5**	**3**	**4.5**	**6**	**7.5**
	UNIT SIZE					
NON-METROPOLITAN AREAS	**0B**	**1B**	**2B**	**3B**	**4B**	**5B**
Allegany County	352	377	453	523	583	645
Cattaraugus County	352	377	453	523	583	645
Chenango County	352	377	453	523	583	645
Clinton County	372	399	478	553	617	681
Columbia County	403	433	520	600	670	739
Cortland County	377	405	486	561	626	691
Delaware County	352	377	453	523	583	645
Essex County	352	377	453	523	583	645
Franklin County	352	377	453	523	583	645
Fulton County	352	377	453	523	583	645
Greene County	368	395	475	548	612	675
Hamilton County	352	377	453	523	583	645
Jefferson County	352	377	453	523	583	645
Lewis County	352	377	453	523	583	645
Otsego County	366	391	470	543	606	668
St. Lawrence County	352	377	453	523	583	645
Schuyler County	352	377	453	523	583	645
Seneca County	392	420	503	582	650	716
Steuben County	352	377	453	523	583	645
Sullivan County	395	423	507	586	653	721
Tompkins County	445	476	571	660	736	813
Ulster County	390	417	501	578	645	711
Wyoming County	365	391	468	541	605	666
Yates County	352	377	453	523	583	645

MAXIMUM MONTHLY RENTS BY UNIT SIZE (for 60% income limits)

Effective 3/09/2000

AVERAGE HOUSEHOLD SIZE	1	1.5	3	4.5	6	7.5
	UNIT SIZE					
METROPOLITAN AREAS	**0B**	**1B**	**2B**	**3B**	**4B**	**5B**
MSA: Albany-Schenectady-Troy	538	576	396	800	892	984
MSA: Binghamton	463	496	595	687	768	846
PMSA: Buffalo-Niagara Falls	492	527	633	732	816	900
PMSA: Dutchess County	625	670	804	930	1,036	1,144
MSA: Elmira	444	475	571	660	736	812
MSA: Glens Falls	453	486	583	674	751	829
MSA: Jamestown	423	453	544	628	700	774
PMSA: Nassau-Suffolk	804	861	1,033	1,193	1,330	1,469
PMSA: New York	589	632	759	876	978	1,079
PMSA: Newburgh	571	612	735	849	946	1,044
MSA: Rochester	550	589	708	817	912	1,006
AREA: Rockland County	865	927	1,113	1,285	1,434	1,582
MSA: Syracuse	493	528	634	733	817	902
MSA: Utica-Rome	423	453	544	628	700	774
AREA: Westchester County	873	935	1,122	1,296	1,446	1,595

AVERAGE HOUSEHOLD SIZE	1	1.5	3	4.5	6	7.5
	UNIT SIZE					
NON-METROPOLITAN AREAS	**0B**	**1B**	**2B**	**3B**	**4B**	**5B**
Allegany County	423	453	544	628	700	774
Cattaraugus County	423	453	544	628	700	774
Chenango County	423	453	544	628	700	774
Clinton County	447	479	574	664	741	817
Columbia County	484	519	624	720	804	887
Cortland County	453	486	583	674	751	829
Delaware County	423	453	544	628	700	774
Essex County	423	453	544	628	700	774
Franklin County	423	453	544	628	700	774
Fulton County	423	453	544	628	700	774
Greene County	442	474	570	658	735	810
Hamilton County	423	453	544	628	700	774
Jefferson County	423	453	544	628	700	774
Lewis County	423	453	544	628	700	774
Otsego County	439	470	564	651	727	802
St. Lawrence County	423	453	544	628	700	774
Schuyler County	423	453	544	628	700	774
Seneca County	471	504	604	699	780	860
Steuben County	423	453	544	628	700	774
Sullivan County	474	507	609	703	784	865
Tompkins County	534	571	685	792	883	975
Ulster County	468	501	601	694	774	854
Wyoming County	438	469	562	650	726	800
Yates County	423	453	544	628	700	774

APPENDIX C

DHCR REGIONAL OFFICES

ALBANY			
Regional Director	Lynn Kopka		
Address	38-40 State Street, 2nd Floor, Hampton Plaza Albany, NY 12207		
Phone Number	(518) 486-5012		
Counties Served	Albany Clinton Columbia Delaware Dutchess Essex Fulton	Greene Hamilton Montgomery Orange Otsego Putnam Rensselaer	Saratoga Schenectady Schoharie Sullivan Ulster Warren Washington
BUFFALO			
Regional Director	Thomas Van Nortwick		
Address	535 Washington St Suite 105 Buffalo, NY 14203		
Phone Number	(716) 847-7955		
Counties Served	Allegany Cattaraugus Chautauqua Chemung Erie Genesee	Livingston Monroe Niagara Ontario Orleans Schuyler	Seneca Steuben Wayne Wyoming Yates
SYRACUSE			
Regional Director	Daniel Buyer		
Address	620 Erie Blvd. West, Suite 312 Syracuse, NY 13204		
Phone Number	(315) 478-7179		
Counties Served	Broome Cayuga Chenango Cortland Franklin	Herkimer Jefferson Lewis Madison Oneida	Onondaga Oswego St. Lawrence Tioga Tompkins

NEW YORK CITY			
Regional Director	Gregory Watson		
Address	25 Beaver Street, 7th Floor New York, NY 10004		
Phone Number	(212) 480-7644		
Counties Served	Bronx Kings New York	Queens Richmond Nassau	Suffolk Rockland Westchester

APPENDIX D

DIFFICULT DEVELOPMENT AREAS

Year 2000 Metropolitan Difficult Development Areas

Metropolitan Area	**Components**
Dutchess County	Dutchess County
Nassau-Suffolk	Nassau County Suffolk County
New York	Bronx County Kings County New York County Putnam County Queens County Richmond County Rockland County Westchester County

Year 2000 Non-Metropolitan Difficult Development Areas

Clinton County
Columbia County
Cortland County
Essex County
Greene County
Hamilton County
Jefferson County
Schuyler County
Sullivan County
Tompkins County
Ulster County

APPENDIX E

QUALIFIED CENSUS TRACTS

STATE: New York

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Albany County	2.00	5.01	6.00	7.00	8.00	11.00	15.00	25.00	128.00	129.00	132.00	
Bronx County	11.00	15.00	17.00	20.00	23.00	25.00	27.01	27.02	31.00	33.00	35.00	37.00
	39.00	41.00	43.00	44.00	47.00	48.00	49.00	50.00	52.00	56.00	59.01	62.00
	65.00	67.00	69.00	71.00	73.00	75.00	77.00	79.00	81.00	83.00	85.00	86.00
	87.00	88.00	89.00	99.00	105.00	110.00	115.01	115.02	119.00	121.01	121.02	123.00
	127.01	127.02	129.01	129.02	131.00	133.00	135.00	137.00	139.00	141.00	143.00	144.00
	145.00	147.00	149.00	155.00	157.00	161.00	165.00	167.00	169.00	173.00	175.00	177.00
	179.00	187.00	189.00	193.00	195.00	197.00	199.00	201.00	205.00	206.02	211.00	213.01
	213.02	215.01	215.02	217.01	219.00	221.00	223.00	227.01	229.01	229.02	233.01	233.02
	235.01	235.02	237.01	237.02	239.00	241.00	243.00	245.00	251.00	253.00	255.00	257.00
	263.00	265.00	271.01	317.00	324.00	334.00	359.00	361.00	363.00	365.01	365.02	367.00
	369.01	369.02	371.00	373.00	375.01	375.02	375.03	377.00	379.00	381.00	383.00	385.00
	389.00	391.00	393.00	397.00	399.01	403.01	435.00	458.00				
Broome County	2.00	3.00	5.00	10.00	11.00	12.00	13.00	135.00				
Cattaraugus County	9619.00	9620.00	9622.00									
Cayuga County	419.00											
Chautauqua County	303.00	305.00										
Chemung County	6.00	7.00	8.00	10.00								
Clinton County	1011.00											
Columbia County	9912.00											
Dutchess County	2201.00	2202.00	2203.00	2204.00	2205.00	2206.00	6300.00	6500.00				
Erie County	3.00	4.00	12.00	13.01	13.02	14.02	15.00	16.00	20.00	25.01	25.02	26.00
	27.01	27.02	28.00	29.00	31.00	32.01	32.02	33.02	34.00	35.00	36.00	40.02
	44.02	55.00	56.00	60.00	61.00	62.02	64.00	69.00	70.00	71.01	71.02	72.01
	119.01	121.00	122.00	148.04								
Genesee County	9510.00	9515.00										
Herkimer County	104.00	111.00										
Jefferson County	620.00											

Kings County	2.00	11.00	18.00	20.00	23.00	25.00	27.00	29.01	29.02	55.00	59.00	71.00
	85.00	112.00	120.00	125.00	127.00	185.01	185.02	214.00	217.00	221.00	222.00	225.00
	226.00	228.00	231.00	233.00	234.00	235.00	237.00	238.00	239.00	241.00	243.00	251.00
	255.00	257.00	259.01	259.02	261.00	263.00	281.00	283.00	285.01	285.02	287.00	289.00
	293.00	299.00	303.00	307.00	309.00	326.00	328.00	330.00	342.00	347.00	348.01	348.02
	351.00	352.00	353.00	357.00	359.00	360.01	360.02	363.00	365.01	365.02	367.00	369.00
	371.00	373.00	375.00	379.00	381.00	382.00	387.00	389.00	391.00	393.00	395.00	405.00
	409.00	411.00	413.00	415.00	417.00	419.00	421.00	423.00	425.00	427.00	429.00	431.00
	433.00	435.00	437.00	441.00	453.00	465.00	489.00	493.00	505.00	507.00	509.00	511.00
	513.00	523.00	525.00	527.00	529.00	531.00	533.00	535.00	537.00	539.00	545.00	547.00
	549.00	551.00	572.00	610.01	884.00	892.00	900.00	906.00	908.00	910.00	912.00	916.00
	918.00	944.02	982.00	1034.00	1058.00	1106.00	1110.00	1130.00	1134.00	1138.00	1140.00	1146.00
	1148.00	1150.00	1152.00	1154.00	1156.00	1158.00	1160.00	1164.00	1166.00	1168.00	1170.00	1172.01
	1192.00	1194.00	1210.00	1214.00								
Livingston County	305.00											
Monroe County	2.00	7.00	13.00	14.00	15.00	16.00	17.00	23.00	27.00	32.00	33.00	38.02
	39.00	40.00	41.00	43.00	46.02	47.01	48.00	49.00	50.00	51.00	52.00	53.00
	55.00	56.00	57.00	59.00	64.00	65.00	66.00	69.00	79.00	80.00	90.00	91.00
	92.00	93.01	94.02	94.03	96.01	96.02	96.03	96.04				
Montgomery County	701.00	702.00	706.00	709.00								
Nassau County	4070.00	4111.00	4144.00									
New York County	2.01	2.02	6.00	8.00	10.02	14.02	16.00	18.00	20.00	24.00	25.00	26.01
	36.01	41.00	62.00	117.00	119.00	156.02	162.00	164.00	166.00	168.00	172.01	172.02
	178.00	180.00	182.00	184.00	186.00	188.00	190.00	192.00	194.00	196.00	198.00	201.02
	202.00	204.00	206.00	207.02	208.00	209.01	209.02	213.01	213.02	216.00	217.01	217.02
	218.00	219.97	220.00	222.00	223.97	223.98	224.00	226.00	227.02	228.00	229.00	230.00
	231.02	232.00	234.00	235.02	239.00	243.01	243.02	245.00	249.00	251.00	261.00	267.00
	269.00	277.00	291.00	293.00								
Niagara County	202.00	205.00	209.00	211.00	212.00	213.00	237.00					
Oneida County	202.01	203.00	204.00	205.00	206.00	207.01	208.01	208.03	209.00	211.03	212.01	215.00
	218.00											
Onondaga County	5.00	13.00	22.00	23.00	30.00	31.00	32.00	33.00	34.00	35.00	38.00	39.00
	40.00	41.00	42.00	43.00	52.00	53.00	54.00	56.02	61.02			
Ontario County	517.00	518.00										
Orange County	4.00	5.00	6.00	17.00	22.00	150.00						

Queens County	25.00	35.00	43.00	44.02	55.00	87.00	246.00	252.00	262.00	266.00	299.00	442.00
	871.00	942.02	952.00	972.00	1010.00							
Rensselaer County	404.00	407.00										
Richmond County	29.00	40.00	133.01	319.01								
Rockland County	115.03											
St. Lawrence County	9911.00	9912.00	9922.00									
Schenectady County	209.00	210.01	210.02									
Suffolk County	1224.06	1225.01	1233.02	1456.03	1473.00	1580.07	1584.06	1587.05	1591.03	1697.02	1701.01	
Tompkins County	1.00	2.00	3.00	4.00	10.00	12.00						
Warren County	705.00											
Wayne County	213.00											
Westchester County	1.01	1.03	2.01	3.00	4.01	4.02	5.00	10.00	11.01	12.00	13.02	13.03
	22.03	27.00	28.00	29.00	31.00	32.00	35.00	36.00	58.00	61.00	62.00	63.00
	78.00	80.00	93.00	119.01	133.01	143.0						

APPENDIX F

SYNDICATORS ACTIVE IN NEW YORK STATE

Affiliated Capital Corporation
Ms. Ruth Theobald
21150 W. Capitol Drive, #5
Pewaukee, WI 53072

Allstate Insurance
Ms. Anne Fraser
3075 Sanders Road
Northbrook, IL 60062

American Affordable Housing Group
Mr. Frank Haaz
1103 Laurel Oak Road, Suite 105B
Voorhees, NJ 08043
Phone: (856) 435-3200
Fax: (856) 435-4868
fhaaz@snip.net

American Investment Bank
Mr. John Haymond
200 East South Temple
Salt Lake City, UT 84111

Arcand Company
Ms. Lisa Dias
9 SW Monroe Pkway, #150
Lake Oswego, OR 97035

Bank One Capital Corporation
Ms. Elizabeth Bluhm
150 E. Gay St., 24th Fl.
Columbus, OH 43215

Boston Capital Corporation
Mr. David Gasson
One Boston Place, #2100
Boston, MA 02108

Boston Equity Investment, Inc.
Mr. Bob Goldkamp
401 Commonwealth Ave., 2nd Fl.
Boston, MA 02215

Century Pacific
Ms. Genevieve Goloy
1925 Century Park East, #1760
Los Angeles, CA 90067

Community Housing Fund
Mr. John D. MacLachlan
1330 Sabal Palm Drive
Boca Raton, FL 33432

Community Revitalization Fund
c/o The Community Builders, Inc.
Mr. Swan Oey, Director of Finance
8 Penn Center Plaza, Suite 1400,
1628 John F. Kennedy Boulevard
Philadelphia, PA 19103
Phone: (215) 587-4100
Fax: (215) 587-0490
swano@tcbinc.org

Crescent Capital Resources
Mr. Donald Phillips
201 W. Main St., #302
Durham, NC 27702

DJL Enterprise, Inc.
Mr. David L. Johnson
P.O. Box 13073
Kansas City, MO 64199-3073

Dover Historic Properties
Mr. Scott Schaefer
1521 Locust St.
Philadelphia, PA 19102

Edison Capital
Mr. Jeffrey K. Jacobson SVP, Regional Manager
240 Commercial St.
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jjacobson@edcap.com

Fannie Mae
Mr. Wendell Johns
3900 Wisconsin Ave. NW
Washington, D.C. 20016

First Bank System CDC
Ms. Jane Kaiser
2383 University Ave.
St. Paul, MN 55114

First Capital Corporation
Mr. Terry Lerman, President
1350 Old Freeport Road, Suite 3A
Pittsburgh, PA 15238
Phone: (412) 963-1320
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First Credit Capital Corporation
Mr. Gary Johnson
6230 Donegal Drive
Orlando, FL 32819

First Partners Group
Mr. John Quinn
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johnq@firstpartners.com

First Union
Mr. Michael Ramires, Vice President
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Franklin Capital Group
Mr. Joseph E. Resende, President
128 North Pitt Street
Alexandria, VA 22314
Phone: (703) 838-8700
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JER@franklincapitalgroup.com

GE Capital Corporation
Mr. Jeffrey Jacobsen
67 Batterymarch St.
Boston, MA 02110

GMAC Commercial Mortgage
Mr. Tom Cohen
10800 Farley, #306
Overland Park, KS 66210

Gould Capital Corporation
Mr. Michael Soffer
60 Cutter Mill Road, #303
Great Neck, NY 11021

Guilford Capital Corporation
Mr. Thorn McIntyre
2600 East South Blvd., #230
Montgomery, AL 36116
Phone: (334) 288-3992

Heartland Properties
Ms. Susan Hobart
P.O. Box 1602
Madison, WI 53701

House Investments
Ms. Kelly Boyle
10401 N. Meridian St., #275
Indianapolis, IN 46290

Hudson Valley Affordable Housing Finance Corporation
Ms. Kim Jacobs
14 Browns Lane
Hawthorne, NY 10532
Phone: (914) 592-3244
Fax: (914) 592-2549

Interstate Affordable Housing
Mr. Alan Murphy
7948 Dunstable Circle
Orlando, FL 32817

Intrust of New York, Inc.
Mr. Stephen F. Tindall
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Wilmington, DE 19806
Phone: (800) 531-9274
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JER Hudson Housing Capital
Mr. Peter E. Weiss
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John Hancock Realty Advisors
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Kaufman & Broad
Mr. Rick Edson
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KeyCorp—Key Housing Capital
Mr. Peter O. Dion, Senior Vice President
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LaSalle Equity Group
Mr. Bob Sherman
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Lehman Housing Capital
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Lend Lease Real Estate Investments
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Mr. Larry Mandel
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Oak Park, IL 60302

Martin Group, Inc.
Mr. John Martin
306 Main Street
Huntingburg, IN 47542

MCD Property Advisors
Mr. Tom Rini
800 Superior Ave., #2100
Cleveland, OH 44114

McDonald & Company
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