

Section 8: Low Income Housing Tax Credit Program Description and Requirements

LOW INCOME HOUSING TAX CREDIT PROGRAM (LIHTC)

Amendments to LIHTC Program, Changes from HERA and ARRA

2008 & 2009 congressional action through Housing and Economic Recovery Act of 2008 (HERA) and the American Recovery and Reinvestment Act of 2009 (ARRA) are continuing to change the LIHTC industry and will have an impact in 2010. Below you will find a brief summary of the most critical changes:

- Rent and income limits are not yet available for 2010, and will likely be published by HUD early this spring. For the time being, use the 2009 numbers, which reflect section 3009 of HERA. In 2009, HUD provided two tables for income limits separating the LIHTC program income limits from Section 8 income limits. LIHTC income limits are now the Multifamily Tax Subsidy program limits. Some projects will be eligible to use the greater of the non-metro national median income and the rural median income for that region. More information on the income and rent limits by county can be found at:
http://www.ohcs.oregon.gov/OHCS/HPM_income_rent_limits.shtml. To determine if your project is considered rural by the USDA or qualifies for the non-metro national median income, research your project location on the USDA site:
<http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction+sfp&NavKey=property@12>.
- On April 17, 2009, the Internal Revenue Service determined in private letter ruling (PLR) 200916007 that costs of constructing streets and related infrastructure improvements that will be dedicated to public use in a low-income housing tax credit project are capitalizable into the basis of project's residential rental buildings. While this PLR is specific and applicable only to the project to which it was issued, it does shed light on the IRS' interpretation of this type of issue.
- For newly constructed non-Federally subsidized buildings placed in service after July 30, 2008, and before December 31, 2013, the applicable percentage for the new construction/substantial rehabilitation (9%) credit will temporarily be no less than 9%. OHS will award remaining 2010 and 2011 estimated credits in this round. Unless federal legislation extends the use of the 9% tax credit percentage, projects with a 2011 credit award will likely be the last group to use the 9% fixed percentage. The 30% credit applicable percentage continues to float monthly.
- If a project is not in a HUD DDA/QCT, the 9% credit portion of a project may be eligible for the state's basis boost up to 30%, but no greater than 130%. The acquisition credit basis is not eligible for this boost. For additional information on how OHCS has implemented the use of this boost refer to the *Policy on the State's Use of the 130% Boost*, on page 46 of the current QAP in use, the Amended 2009 QAP.
- The definition of a federally subsidized building for the purposes of determining eligible basis has been limited to any obligation on which the interest is exempt from tax under section 103. Thus, additional buildings are eligible for the 9% credit.
- Substantial rehabilitation expenditure requirements must equal the greater of an amount that is 1) at least 20% of the adjusted basis of the building being rehabbed; or 2) at least \$6,000 per low income unit in the building being rehabbed. The \$6,000 minimum is indexed to inflation.
- Community service facilities can be used to generate credit if the facility is designed to serve primarily low income individuals whose income is 60% or less of area median income. The size of the community service facility may not exceed the sum of 1) 25% of the eligible basis of up to \$15,000,000 [of the qualified tax credit project of which it is a part]; and 2) 10% of any

excess over \$15,000,000 of the eligible basis [of the qualified tax credit project of which it is a part].

- All projects that receive a reservation of Low Income Housing Tax Credits will have twelve months from the date of their carryover allocation to meet the Ten Percent of Costs Incurred Test (10% test). The 10% test requires third party certification of incurred project costs to date be presented to OHCS for review and acceptance.
- The basis reduction rule has been clarified to apply to Federally-funded grants received before the compliance period. No basis reduction is required for Federally-funded grants for the property to be rented to low income tenants received during the compliance period if those grants do not otherwise increase the taxpayer's eligible basis in the building.
- The 10% attribution rule has been repealed. This was used to determine whether parties are related for purposes of determining whether an existing building qualified for the low income housing credit. Under HERA, two persons are related for this purpose if they bear a relationship to each other specified in sections 267(b) or 707(b)(1) (related to the disallowance of losses).
- The 10 year rule has been amended with a new exception which waives the 10-year rule in the case of any Federally- or State-assisted building. The definition of Federally-assisted building is expanded to include any building which is substantially assisted, financed, or operated under section 8 of the Housing Act of 1937 along with various other sections of the National Housing Act, section 515 of the Housing Act of 1949 or any housing program administered by HUD or Rural Housing Service of the Department of Agriculture (RD). The IRS has not issued further guidance on this waiver.
- OHCS must provide a preference for projects that: 1) include energy efficiency features in the project and 2) consider the historic nature of the project (e.g. encouraging rehabilitation of certified historic structures.)
- The area median gross income applied for residential rental property located in certain rural areas is modified in the case of projects subject to the low income housing tax credit volume limits. The income targeting rules of the housing credit are applied by reference to the greater of the otherwise applicable area median gross income standard or the national non metropolitan median gross income (for example, for 2008, it is \$49,300 for a family of four. The 2010 national non metro median gross income has not yet been published.)
- OHCS must provide a preference for projects located in HUD-determined Qualified Census Tracts (QCT), the development of which contributes to a concerted community development plan. A 130% bonus is available to projects located in QCTs, which are defined as census tracts in which 50% or more of the households are at or below 60% of area median income, as well as census tracts with a poverty rate of 25% or higher. To determine if your project is located in a QCT, access the following web site:
<http://qct.huduser.org/QCTGIS/USMainLand/Map.aspx>.
 - For details on the state's use of the basis boost, as per HERA, please see the 2009 Amended QAP.
- Allows OHCS, at its discretion, to award credits in a manner not in accordance with the requirements of the Qualified Allocation Plan. Should an award be made that is not in accordance with the requirements of the Qualified Allocation Plan, OHCS must document this allocation in writing to the general public.
- IRC Section 42 requires a comprehensive market analysis of the housing needs of the low-income individuals in the area served by each housing credit project. The analysis must be conducted at the developer's expense and submitted with the application. A disinterested party approved by the allocating agency must conduct the analysis. (See the Market and Rent Assessment section of the application for more information.)

- Owners of projects that have loans that are defined as cash flow only, deferred payment or partnership loans must be prepared to provide a letter from independent tax counsel or tax accountant to the effect that the loan has a reasonable expectation to be repaid to allow the loan proceeds included in basis. This letter will be required at Final Application if budget materials indicate project cash flows cannot pay off the loan in the identified loan term.

Introduction

The Low Income Housing Tax Credit (LIHTC) was enacted by Congress to encourage new construction and rehabilitation of rental housing for low-income households. In establishing the tax credit incentive, Congress recognized developers may not receive enough rental income from a low-income housing development to: 1) cover the costs of developing and operating the project, and 2) provide a return to investors sufficient to attract the equity investment needed for development. To spur investment, Congress authorized the states, within specified limits, to allocate tax credits to qualifying housing projects. The credits may be shared among owners (equity investors), much as income and losses are shared among business partners for tax purposes. Generally, the investors are recruited by syndicators, and ownership rights are controlled by limited partnership agreements.

The amount of LIHTC that may be awarded to a building is based upon the cost of the building and the portion of the project that low-income households will occupy. The cost of acquiring, rehabilitating, and constructing a building constitutes the building's eligible basis. The portion of the eligible basis attributable to low income units is the building's qualified basis. In general, the qualified basis excludes the cost of land, obtaining permanent financing, rent reserves, syndication and marketing. The applicable percentage of the qualified basis may be claimed annually for 10 years as the low income housing tax credit.

The LIHTC program is jointly administered by the Internal Revenue Service (IRS) and state tax credit allocation agencies, such as Oregon Housing and Community Services (the "Department"). Credits are provided to states to allocate to eligible affordable housing projects. These credits are considered to be under the State's per capita credit authority and are a limited and scarce resource.

Overview of the Credit Allocation and Review Process

Under Section 42 of the Internal Revenue Code, OHCS is responsible for determining which applicants should receive the tax credit and the dollar amount of credits each should receive. In making these determinations, OHCS must comply with federal requirements and meet the following program goals:

- Give preference to projects that provide housing to households with the lowest incomes for the longest period of time,
- Assist in affordable housing development in areas with the greatest low income housing needs,
- Provide housing for special needs populations,
- Encourage equitable allocation of credits across the state,
- Support housing for families with children,
- Support housing in Qualified Census Tracts and/or areas where community revitalization is a local priority,
- Encourage resident services and community involvement,
- Provide an allocation of tax credits in an amount sufficient to make the project financially feasible and viable as a low-income housing project throughout the compliance period.

In addition, OHCS may supplement these general goals with more specific local goals in order to meet local low-income housing needs. This may include but not be limited to:

- Mixed income projects where appropriate,
- Mixed use projects where appropriate,
- Acquisition and rehabilitation of expiring use projects,
- Housing near employment centers,
- Approaches in design, planning, building and financing of low income housing that maintain quality and long term sustainability, durability and ease of maintenance of affordable units,
- Other goals as determined locally or by OHCS.

Tax credits are awarded on a per building basis. For a particular building to qualify for tax credits, it must be a part of a low income housing "project". To qualify for consideration for credits a project must:

- Be residential rental property
- Make an election to restrict both rent and income as follows:
 - Rent: restrict rents (including utility charges) for tenants in low income units to 30 percent of either the 50 percent area median income as adjusted for family size or the 60 percent of area median income as adjusted for family size. Rents may be further limited based upon the limitation selected and other representations made in the application to OHCS.
 - Income: maintain at least 20 percent of the available units for households earning up to 50 percent of area median income as adjusted for family size, **or** maintain at least 40 percent of the available units for households earning up to 60 percent of area median income as adjusted for family size.
 - Maintain habitability standards: if the project involves rehabilitation, there must be expenditures of at least \$6,000 per unit or 20 percent of the unadjusted basis of the building, whichever is greater
- Operate under the program's rent and income restrictions for a minimum 30 year extended use time period.

The OHCS application process was created in accordance with the requirements of Section 42 of the Internal Revenue Code to select proposals for tax credit awards. The application process is more fully described later in this document. OHCS may not award more credits to a project than are required to make the project financially feasible. In evaluating projects, OHCS must consider any proceeds or receipts expected to be generated through tax benefits, as well as the reasonableness of development hard and soft costs. In general, the IRS expects OHCS to compare the proposed project's development costs with the non-tax credit financing, both private and public. The difference between the costs and the sources to finance the costs is the financing gap. Tax credits may be used, up to a ceiling, to attract the equity investment to fill this gap.

Once credits have been awarded to a developer, the developer typically sells the credits to private investors. The private investors use the credits to offset taxes otherwise owed to the federal government. The money private investors pay for the credits is paid into the project as equity financing. This equity financing is generally used to fill the gap between the development cost of a project and the non-tax credit financing sources available, such as mortgages, that could be expected to be repaid from rental income.

Owners must place the project in service no later than December 31 of the allocation year (for competitive projects); unless a Carryover allocation is obtained. If a Carryover allocation is obtained, the project must be placed in service no later than December 31 of the second year following the original allocation. Investors can claim the credits for each year of a ten year period (called the “credit period”) as long as the project is **operating in accordance with the representations made to OHCS in its application for credits and in accordance with IRS regulations**. Individual and corporate investors send the IRS Form 8609 (initially obtained from OHCS in the first year of placed in service), “Low Income Housing Credit Allocation Certification” to the Internal Revenue Service, PO Box 331 Attn: LIHC Unit DP 607, South Philadelphia Campus, Bensalem, PA 19020 and a copy of the completed form to OHCS, APM Department, 725 Summer Street NE, Suite B, Salem OR 97301-1266 when they claim the credits.

Once a project has been placed in service, OHCS is responsible for monitoring the project for compliance with state and federal requirements concerning household income, rents, project habitability, resident services and other requirements as represented in the application, Declaration of Land Use Restrictive Covenants and other agreements. If noncompliance is discovered, OHCS must report the event of noncompliance to the IRS and if the non-compliance is not corrected, the IRS may recapture or deny credit for previously used or issued tax credits. The IRS issues regulations on monitoring requirements that OHCS follows. These regulations are described in the Tax Credit Compliance Guidebook (available from OHCS upon request).

Application for LIHTC Funding

To apply for tax credits, a developer must submit a detailed proposal to OHCS in the format prescribed which incorporates the specific requirements listed below.

All projects, including those competing for set-asides, will be evaluated by OHCS on the criteria described in the application package and the Qualified Allocation Plan. The evaluation process is based upon criteria established in response to the local or State's low-income housing priorities as designated by the Consolidated Plan, and those categories required under amended IRC § 42.

Notwithstanding anything else herein to the contrary, OHCS reserves the right to reject any application of tax credits if, in its judgment, the proposed project is not consistent with the goals of providing decent, safe and sanitary housing for low-income persons as set forth in its enabling legislation, does not meet the requirements of IRC Section 42, as amended and all regulations promulgated there under, or is not consistent with OHCS's mission and value statements. OHCS may impose additional conditions on any project applicant.

Threshold Criteria

All projects must achieve a minimum standard, as established by OHCS in this application packet and described in each of the following threshold categories. Failure to achieve the minimum standard will cause the application to be pulled from further review.

Site Control All applicants must demonstrate site control. Evidence of site control can include: fee simple title, evidence from the local government demonstrating their intent to transfer property, or a contract or agreement demonstrating site control, including an option on the property.

Zoning Applicants must attach a certification completed by the local planning department indicating that the property is properly zoned for the use intended, or the intended use is allowed with conditions and application has been made for a conditional use permit. Under no circumstances will anything other than the department-approved certification included in this application be accepted as evidence of proper zoning. Projects requiring zone changes or annexations do not meet the threshold.

Site Review and Environmental Review All applicants must complete the Environmental Review Checklist. OHCS' Regional Advisor to the Department (RAD) will review the information on the form during the site review. The Environmental Review Checklist is included in the application materials.

Architectural Review

The architectural plans identified in the application must be submitted for initial review by the department architect, division administrator and department director.

LIHTC Market Study Requirement Pertaining to Certified Appraiser

Completing a rental analysis and estimating unit rents for a specific project is considered an appraisal under the Uniform Standards of Professional Appraisal Practice (USPAP) and ORS 674. The rental analysis sections (both market and affordable) of the third party market analysis must be completed by a State Certified General Appraiser. Please contact the Oregon Appraiser Certification and Licensure Board for further information regarding certification.

Sponsor Capacity

Sponsors must be able to demonstrate an understanding of the Low-Income Housing Tax Credit Program, and proficiency with housing-related development. No sponsors with limited multi-family experience will be excluded from the application process as long as they engage the services of qualified development team members. Additional consideration may be given to program sponsors who have consistently completed their projects in accordance with representations made in their applications, and who are maintaining their project in compliance with tax credit program policies and procedures and federal regulations.

OHCS may reject applications from previous program participants who have failed to demonstrate proficiency with the LIHTC Program or other government-funded housing programs. OHCS may also reject or discount an application from previous program participants who have failed to complete their projects in accordance with their applications and/or certified plans presented to OHCS or other public or private allocating agencies, or who have failed to effectively utilize previously allocated tax credits, or who have been found to be in chronic non-compliance with program rules as evidenced by Department or other public or private allocating agencies' project monitoring.

Financial Feasibility

Tax credits for a project may not exceed the amount necessary for the financial feasibility of the project. Financial feasibility analysis will include a comparison with current market costs and an assessment of the reasonableness of projected cost components and operating expenses. OHCS' project evaluation will utilize common lending standards and underwriting criteria for evaluating multi-family projects. Basic criteria include, but are not limited to:

- **Primary** Debt Service Ratio no lower than 1.15 and no higher than 1.20 (unless accompanied by an explanation from the lender)
- Maximization of Loan to Value ratios and documentation thereof from the project lender
- New construction hard costs are no more than \$162 per square foot unless adequately justified by community constraints or building type
- Developer fees in accordance with Department policy (as stated herein)
- Reasonable operating expenses, as determined by OHCS for the project size, type and population to be housed, *including*:

- Minimum operating reserves of 4 to 6 months of operating expenses. Reserves less than or in extreme excess to this will be approved on a case-by-case basis with justification.
- Replacement reserves of no less than \$250 per unit per year for new construction development for seniors and \$300 per unit per year for new construction development for families and rehabilitation developments. These figures are guidelines. A more precise measure of reserves needed, will come from a carefully prepared Reserve for Replacement schedule.
- Acquisition price for acquisition of buildings or land shall be limited to the appraised value as determined by an independent third party certified appraiser.
- Ability of the project to demonstrate long term financial viability via a 30 year projection.
- Tax Credit factor at current market rates. In determining the anticipated tax credit proceeds and the corresponding tax credit factor listed in the application, Applicants may be asked to substantiate, to the satisfaction of the Department, the projected tax credit pricing. If required, applicants must provide evidence that the tax credit pricing and/or yield factor listed in the application has a reasonable likelihood of being achieved given the known conditions of the current equity market.

Note: Tax exempt bond projects with funding gaps requesting Consolidated Funding Cycle funds to fill the gaps may be required to apply for these funds during the CFC application round.

OHCS reserves the right to determine, in its sole discretion, whether the Letters of Interest or Intent, Award Letters, or Commitment Letters are satisfactory. A substantial change/financing restructure in the source or financing terms after reservation of credits may, in the sole discretion of OHCS, result in all or a part of the credits being recaptured or reduced by, or returned to, OHCS, if the Department determines that the project is unlikely to place in service within the required timeframe or the project's completion requires additional LIHTC resources in excess of the limits established in the QAP.

Architectural/Site Review

In response to a legislative mandate for promoting good quality in the development, design and construction of publicly funded housing, OHCS has adopted *Architectural Requirements* for all LIHTC projects. These requirements are minimum standards that apply to new construction and to the renovation of existing structures. They promote long-term livability and the wise use of public investment by addressing Site Design, Building Design and Unit Design issues. The standards are listed in the "Architectural Standards and Product Replacement" section of the application along with specific architectural submittal requirements.

After passing the Threshold architectural review, the OHCS architect reviews projects twice more before construction can begin. Preliminary Architectural Review is made during the Schematic and Design Development phases of a project. Final Architectural Review is then made when Drawings and Specifications are nearly complete and before the project is submitted for building permit.

Sometimes, after studying the requirements and preparing a rough feasibility analysis, the sponsor and architect may have remaining questions about the Architectural Requirements and the Architectural Review Process. In that case a pre-application conference with OHCS may be useful before submitting all the documents necessary for the formal application.

Changes made to architectural designs after the award or reservation of credits must be documented and are also subject to OHCS architectural approval.

Long-Term Affordability

All tax credit developments are subject to an extended use affordability period of a minimum of 15 years for total minimum affordability period of 30 years. This Extended Use commitment is defined under IRC Section 42 regulations as 15 years beyond the initial 15-year compliance period.

Resident Services

Sponsors who receive LIHTC must include in their affordable housing development a provision for residents to have access to services appropriate to the identified needs of the target population.

The anticipated outcomes of the resident service plans are:

- Thorough coordination, collaboration, and community linkages, provide residents the opportunity to access appropriate services which promote self-sufficiency, maintain independent living, and encourage positive life choices; and
- To effectively maintain the fiscal and physical viability of the development by incorporating into the ongoing management appropriate services that address resident issues as they may arise.

Project evaluation will reward projects offering appropriate resident services. Applicants are highly encouraged to build appropriate services provisions into their operating expense budgets.

Resident services are not intended to be limited to services provided on site, or targeted only for at risk residents or residents with special needs. Participation in accessing services is not mandatory for residents. Resident services are intended to be a support system integrated into the housing model and available to all residents. Resident services can be incorporated into the operation and management in a variety of ways, with the goal of helping residents achieve greater social and economic self-sufficiency as well as an enhanced quality of life. While service-enriched housing may offer assistance to residents facing a crisis, it should also focus on addressing residents' needs and linking residents to community resources that enrich their lives. The most effective service-enriched housing encourages and supports resident participation in the decision making process.

Housing Need and Demand

The project sponsor must be able to demonstrate evidence that the project meets a clear need in the community in which it is sited. This must include a discussion substantiating community need as well as market information as per the application materials. Please see the Market and Rent Assessment section for additional information.

Policy on Material Participation by Nonprofit Organizations

It is preferred that Material Participation of the nonprofit be demonstrated as if the applicant is applying under the 10% nonprofit set aside. For partnerships, turnkey or joint ventures that have as a general partner or co-general partner a local tax-exempt nonprofit organization, OHCS expects material participation by the said local tax-exempt nonprofit organization to include, but not be limited to:

- Participation in developer fees and excess cash flows of at least 25% of the proceeds.
- Participation in project oversight and decision making, such as direct involvement in application preparation, direct involvement in discussions for construction, bridge and debt financing, a close working relationship with the property management firm, and tenant selection. The project must demonstrate an ability to further the nonprofit's charitable mission and there should be an ability on the part of the nonprofit to override any fiduciary duty to the owners when that duty conflicts with the charitable mission of the nonprofit.
- Provision of assistance that empowers the nonprofit and enables it to gain expertise.
- It is further required that the said nonprofit NOT be affiliated with or controlled by a for profit organization.

Eligible Applicants

There are no restrictions concerning who may apply to OHCS for an allocation of LIHTC.

Basic Eligibility and Considerations for Applicants

In order to be eligible to receive an allocation of LIHTC, a project must be considered a “qualified low income housing project.” To meet this test, a project must be a **residential rental property** for the purposes of IRC § 42,. This definition focuses on the following issues:

- Residential rental properties must include separate and complete facilities for living, sleeping, eating, cooking and sanitation.
- In addition to actual residential units, functionally related and subordinate facilities may be included in eligible basis if they are available to all tenants with no additional fees attached to them.
- A scattered site project may be treated as a single project if **all** units in all the buildings are rent-restricted. A scattered site is a project where multiple buildings with similar units are located on separate sites, within management proximity to one another, owned by the same party, managed by the same party, and financed under the same agreements. All scattered site projects must be 100% affordable.
- If a building consists of both residential and nonresidential areas, the nonresidential portion will not preclude the residential portion from qualifying for credit. Determinations will be made on a reasonable basis to ensure that the costs for the commercial use portion of such a mixed-use building are not included in the credit computation.
- Residential rental units must be available for use by the general public in a nondiscriminatory manner. Definitions and authority regarding public use and discrimination are provided by Housing and Urban Development (HUD).
- For a project to qualify for a credit award, it must meet a minimum low income set aside requirement, as outlined earlier in this section.
- The cost and qualified basis of a community room in a phased project must be carried by both phases. The department must receive a copy of an agreement detailing the division of liability, cost burden, etc. between the phases.

A building owner must elect and fulfill one of the following low-income set-asides:

- **the 20/50 test:** at least 20% of the units must be both rent restricted and occupied by tenants with incomes at or below 50% of area median income as adjusted for family size (as determined by HUD)
- **the 40/60 test:** at least 40% of the units must be both rent restricted and occupied by tenants with incomes at or below 60% of area median income as adjusted for family size (as determined by HUD)

The minimum set aside is the election that commits the building owner to a specific income level which will serve to define low income for that building. Under a 20/50 election, an owner that claims 100% of units as eligible for LIHTC must rent all units to households at or below 50% of area median income as adjusted for family size in order to claim 100% of the credit.

Other Key Application Requirements

- The owners are required to sign all OHCS's legal documents relating to the LIHTC program, including, but not limited to, the Reservation Agreement, Declaration of Land Use Restrictive Covenants and other documents as deemed necessary by OHCS.
- Applicants will be evaluated based upon information submitted in the application.

- The application charge as described in the **Application Overview** section of this application is due with application submittal. The charge is non-refundable. Please see the application materials for proper charge transmittal format.
- If awarded a reservation of credits, a reservation charge as stated in the **Application Overview** will be required at the time of signing the reservation agreement. **Do not send the reservation charge with the application.**
- Recipients of credit reservations must receive and sign, as appropriate, in a timely manner the Hold Harmless, Acceptance of Credit Offer and the Reservation and Extended Use Agreement. The reservation of credits will not be made and secured without these documents being fully executed and without receipt of the reservation of credits charge.
- Compliance monitoring charge as stated in the **Application Overview** must be included in the operating expense budget.

Allocation Limitations

During the application process, the following limitations shall apply:

- The maximum amount of tax credits awarded per project is no more than 10% of the previous year's State of Oregon annual cap awarded. (see the Competitive Allocation Limitations Policy in the Amended 2009 QAP) For 2010, the state's per capita award is roughly \$8 million credits. However, the previous year's annual per capita authority was \$8.7 MM, and thus the maximum credit award per project for the 2010 credit year will be \$870,000 in annual credits. In subsequent years, the maximum credit award per project is expected to go down.
- Tax Credit Offers to Reserve and/or Carryover Allocations are not transferrable to other projects.
- For projects with a nonprofit sponsor applying for the 10% nonprofit set-aside, it is required that the nonprofit applicant(s) materially participate in the development of the project; as previously outlined. Changes in General Partner status without the consent of OHCS may result in forfeiture of the Offer to Reserve or Carryover Allocation.
- OHCS will diligently enforce all agreements, warranties and representations of the sponsor regarding the project, especially those made in the Initial Application (also referred to as the Original Application) as well as those made in the Reservation and Extended Use Agreement. Failure to perform or demonstrate progress to achieve project completion may jeopardize the reservation for Carryover Allocation, tax credits previously awarded, and potential future allocations.

Tax Credit Reservations are made based upon representations in sponsors' applications. Once a Reservation and Extended Use Agreement has been offered or executed, written approval for any changes to the project must be obtained from OHCS. This approval shall be made in a timely manner and will not be unreasonably withheld. Changes requiring such approval include but are not limited to:

- Changes in the project's composition may be approved provided the project continues to maintain an evaluation ranking equal to or greater than those awarded to the original project. A re-evaluation of the project is necessary if there are material changes to the project scope. Applicants will be required to submit an amended application, and an additional application charge may be required.
- Composition of the partnership.

- Lender/Equity investor changes.
- Changes in the unit mix or number of units.
- Changes in cost.
- Changes in management agent.
- Any others OHCS in its discretion deem to be substantive changes.

No executive, employee or agent of Oregon Housing and Community Services or any other official of the State of Oregon, including the Governor thereof, shall be personally liable concerning any matters arising out of, or in relation to, the allocation of Low-Income Housing Tax Credits, or the approval or administration of this plan.

Qualified Census Tracts or Difficult Development Area as Identified by HUD

This section lists below the 2010 Difficult to Develop Areas (DDAs) as published by the United States Department of Housing and Urban Development (HUD) on October 6, 2009. HUD DDAs are subject to change without prior notice. A revised list is typically published in the Federal Register in the middle of December each year, in preparation for the following year.

The eligible basis of a project located within a DDA may be increased up to 30 percent. Only the eligible basis attributable to new construction or rehabilitation qualifies for the basis boost. Acquisition expenses do not qualify for the HUD basis boost.

Projects in the following counties are eligible for the basis boost increase, according to HUD’s designation: Coos, Crook, Curry, Douglas, Grant, Hood River, Josephine, Lincoln, Linn, Morrow, Tillamook and Wheeler

The following Oregon counties have been removed from the HUD list for 2010 designation: Clatsop, Gilliam and Willowa.

Projects receiving a forward reservation of Low Income Housing Tax Credits are always at risk of losing their HUD DDA status prior to receiving the allocation of tax credits. A project receives the official allocation of tax credits through execution of the carryover agreement, not at the time of funding reservation. Should the DDA status of a project change prior to carryover allocation, i.e., a project is no longer located in an area with DDA status due to HUD revisions. See the HUD Rule on Effective Date in the LIHTC Program Description and Requirements Section of the application.

The qualified census tract areas are listed below for the following counties. This most recent available listing was published in the Federal Register on December 12, 2002 and supplemented on December 19, 2003 and is available at www.taxcredithousing.com. As of September 18, 2007, the QCTs for 2007 remain in effect for 2010. To find the census tract number for a particular address, visit the HUD User GIS Service – LIHTC Qualified Census Tract Locator at <http://209.48.228.158:8080/QCTGIS/USMainLand/Map.aspx>.

METROPOLITAN QUALIFIED CENSUS TRACTS

Benton County (Corvallis)	7.00, 8.02, 11.01, 11.02
Jackson (Medford-Ashland)	1.00, 2.02, 2.03, 19.00
Lane County	31.02, 37.00, 38.00, 39.00, 42.00, 48.00
Marion County (Salem)	2.00, 4.00, 5.00, 7.00, 8.00, 9.00, 10.00, 17.01

Multnomah County (Portland)	11.01, 21.00, 22.01, 22.02, 23.01, 33.01, 34.01, 34.02, 40.01, 42.00, 44.00 49.00, 51.00, 52.00, 53.00, 54.00, 55.00, 56.00, 76.00, 83.01, 96.06, 98.01
Washington County	332.00

NONMETROPOLITAN QUALIFIED CENSUS TRACTS

Clatsop County	9503.00
Jefferson County	9604.00
Klamath County	9716.00, 9717.00, 9718.00
Malheur County	9704.00
Union County	9707.00

To determine if the project is located in a qualified census tract (QCT) or a Difficult to Develop Area (DDA), consult the latest information available from the United States Department of Housing and Urban Development (HUD) or visit their web site, or the OHCS website at: http://www.ohcs.oregon.gov/OHCS/HRS_LIHTC_Program.shtml. A reference map is provided at the same OHCS website address.

State’s Basis Boost QAP Policy

If a project is not in a HUD DDA/QCT, the new construction or substantial rehabilitation eligible basis of a project may be eligible for the state’s basis boost up to 30%. The acquisition basis of a project (the eligible basis portion associated with acquisition expenses) is not eligible for this basis boost.

Projects with the following characteristics may qualify for the state’s basis boost:

- a. Preservation projects
- b. Projects serving permanent supportive housing goals
- c. Projects that address workforce housing needs, as per the Needs Analysis in the CFC
- d. Projects that are located in Transit Oriented Districts (TODs) or Economic, Development Regions (EDRs) as designated by local governments, or projects in a designated state or federal empowerment/enterprise zone or Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, encouraged or channeled growth, neighborhood preservation, redevelopment, or encouraged the development and use of public transportation.

The above notwithstanding and given the current financial market conditions and testing for financial feasibility of each project, the Department will consider the issuance of the state’s 130% basis boost, for projects outside of Qualified Census Tracts and Difficult to Develop Areas, as identified by HUD, and projects not characterized above. At its sole discretion, the Department reserves the right to return to the above criteria upon ample public notice (as outlined on page 10 of the 2009 Amended QAP), as soon as market conditions improve or within 12 months from the date this Amended Plan becomes effective, **whichever date is later**.

If your project meets the requirements of the above policy, and needs the state’s basis boost for financial feasibility, please complete the Request to Use 130% Basis Boost form in the LIHTC Supplemental Application forms. Your answers need to identify that either the project meets the characteristics outlined in the QAP or the reasons why using the boost will make the project financially feasible and why financial feasibility cannot be achieved without it. Department’s approval of the basis boost does not imply an increase in the amount of tax credit awarded to the project.

Projects with Project Based Vouchers – Final Rule Change

HUD has issued a new final rule which deletes the Project-Based Voucher (PBV) Program Final Rule established October 13, 2005. That rule stated that LIHTC projects with PBV units must limit rents to the lower of the tax credit rent minus utility allowance, the reasonable rent or the rent requested by the owner. The new final rule reinstates the former policy under which public housing agencies do not have to limit their Section 8 Project-Based Voucher rents to tax credit caps.

LIHTC Documents

LIHTC legal documents, including the Reservation and Extended Use Agreement, Carryover Agreement, Declaration of Land Use Restrictive Covenants, as well as a schedule of documents required at time of Placed-In-Service have been approved by the State's Attorney General. It is expected they will be signed as written. Any proposed changes must be in writing, must allow adequate time for review and comment, and must be approved by OHCS prior to execution or recording.

Adjustment of Tax Credit Amount

OHCS will conduct as many as four project evaluations to determine the credit reserved, committed and/or allocated to a project does not exceed the amount necessary for financial feasibility. OHCS will conduct these evaluations upon receipt of the Application, upon any requests for an increase in the amount of awarded tax credits, at the end of the allocation year for the Carryover Agreement, and after the building has been Placed-In-Service (final application). The owner will be required to submit a final update to the application with costs certified by a CPA, when the project is Placed-In-Service. OHCS reserves the right to adjust the amount of tax credit and to negotiate modifications to the proposed project plan and budget. OHCS shall have authority to request additional information from the applicant as it deems necessary.

Project costs will be evaluated against industry cost standards, as well as average costs from competing projects, and OHCS may request additional substantiating documentation. Projects with excessive costs will be subject to adjustments to the amount of credit requested. During each evaluation, OHCS will determine the amount of credit to be reserved, committed or allocated by considering, but not limited to, the following components of each project:

- Total project costs;
- Funding sources available to the project:
 - a) Loans
 - b) Grants
 - c) Tax Credit Proceeds
 - d) Owner Equity
- Percentage of the housing credit dollar amount used for hard costs (actual construction costs, including builder's and contractors fees);
- Projected operating income and expense, cash flow and tax benefits;
- Maximum tax credit eligibility;
- Debt Service Coverage Ratio compared to commercial lending practices; and
- Project reserves.

OHCS will use current market guidelines to estimate the proceeds anticipated from the sale of tax credits. A copy of the Placement Memorandum or Syndication Agreement must be provided to OHCS no later than the date upon which the sponsor applies for Placed-In-Service allocation. If said document has not been finalized, a draft Placement Memorandum or Syndication Agreement

or Limited Partnership Agreement will be acceptable. When actual proceeds are determined, there may be an adjustment to the credit reserved or committed. Credits will not be increased beyond the amount originally reserved unless application amendments are submitted and the request is approved by OHCS's Finance Committee. Tax credits will not be allocated to projects in excess of the amount necessary to fund the equity gap as determined by OHCS using the value of the credit (expressed as a percentage of the total ten-year credit) established at the time of application. If actual project costs or funding sources differ substantially from the projections submitted in the application, OHCS may reduce the final credit allocation or the Owner may establish project reserves to offset the deficit for allowable purposes. The conditions for such reserve accounts will be determined on a case-by-case basis.

Project soft costs include developer fees, consultant fees and syndication fees. Total project costs include all costs attributable to basis, other than land, syndication fees (if any), development fees and tax credit application charges. OHCS requires full disclosure of all fees paid to parties related to the sponsor and/or developer. If an identity of interest exists between the developer and general contractor, contractor profit, including supervisory fees, may not exceed eight percent of the construction contract and contractor's overhead may not exceed two percent of the construction contract. Developer fees shall include: developer overhead, profit, and consultant fees for services normally performed by the developer.

Additional eligible basis will be considered for projects located in HUD's designated "Hard to Develop Areas" and "Qualified Census Tracts" or project complying with the State's Basis Boost policy as outlined earlier in this document and detailed in the 2009 Amended QAP, if deemed necessary by OHCS for the viability of a project. The amount of tax credits allocated to a project will be limited in the evaluation process to the minimum necessary to make the project financially feasible.

Carryover Requirement

If a project is not placed in service by December 31st of the year tax credits are awarded, it will lose the credits awarded to it unless it meets the requirements of a Carryover Allocation. Project buildings may qualify for a carryover allocation if, prior to December 31st, the sponsor completes the following steps:

- An application for a carryover allocation is submitted to OHCS by December 1st of the year of the tax credit allocation and includes all required documentation. Applications received after December 1st of the credit year are subject to a late charge (see **Application Overview**).
- The time for satisfying the 10% test and submitting related documentation will be the later of 12 months after the date of carryover allocation, or December 31st of the tax credit allocation year. The 10% test is verification that the owner has incurred, by the close of the calendar year of the allocation, costs totaling more than 10% of the reasonably expected basis in the project.
- If the owner has not secured the land, i.e., the land is otherwise neither secured or encumbered for the duration of the period of project affordability, the applicant must continue to maintain site control until the time required for meeting 10% of the reasonably expected basis test.
- Sponsors should contact OHCS to obtain the carryover application materials required when applying for a carryover allocation.

A project receiving a Carryover Allocation must be placed in service no later than the close of the second calendar year following the calendar year in which the allocation was made (e.g., if the project receives 2011 credits, it must be placed in service by December 31, 2013).

The Carryover application will request the following information:

- An interim financial feasibility analysis. The Sponsor must provide OHCS with the following information as soon as possible after the project has received its Reservation **but in no case any later than *December 1st of the year of the credits***. The following documentation must be submitted in order to initiate the Carryover Allocation review process:
 - Updated project pro formas, including sources and uses, income and expenses.
 - Certification of all subsidies and grants;
 - Third party certification that the owner's basis (incurred costs) in the project is more than 10% of the anticipated basis of the completed project;
 - Certification that the owner has received title to the project site.
 - Copy of **draft Partnership Agreement** indicating tax credit proceeds available to the project together with a contribution schedule.

Once OHCS has received and reviewed all necessary documents, a determination that the carryover requirements have been met will be made. OHCS will then prepare a Carryover Allocation Agreement. The Carryover Allocation Agreement will be provided to the IRS along with OHCS's filing for Low Income Housing Tax Credit purposes.

The Carryover Allocation Agreement must be executed before December 31st in the year of the credit. Failure to execute the document will result in a loss of LIHTC to the development.

The Department may revoke a reservation of credits if the Department, in its discretion, believes (based on thorough analysis), that more than 10% of the total estimated project cost will not be expended within twelve months of the allocation date or end of the calendar year in which the Carryover Allocation is made (whichever is later). Furthermore the Department may revoke a reservation of credits if the Department, in its discretion, believes the project will not be placed in service within two years following the calendar year in which the Carryover Allocation is made or by the dates mutually agreed upon.

Placed-in-Service

Once a project has been Placed-In-Service, OHCS can begin the final review process for issuing IRS Form(s) 8609. The process begins when the owner submits a request for Issuance of IRS 8609.

The request for Issuance of IRS 8609 (Final Application) must be submitted to the department no later than 6 months after the last building is placed in service, or in the case of acquisition rehabilitation when the project is substantially complete. Applications received later than 6 months are subject to a late charge, as described in the Application Overview. We highly encourage sponsors to submit the Final Application as soon as the information necessary for the issuance of 8609s is available.

A final financial feasibility analysis will be required before OHCS issues the IRS Form(s) 8609. Please allow a minimum of thirty days for this review, once all the necessary information has been provided to OHCS. The Sponsor must provide OHCS with the following information:

- the Final Application, as posted on the OHCS website;
- certification of final costs by a third party professional such as an accountant or a tax attorney,
- copies of the Certificates of Occupancy;
- copy of the Cost Certifications required by lender or syndicator;
- copy of Placement Memorandum or Syndication Agreement indicating tax credit proceeds available to the project together with a contribution schedule;

- a opinion letter from the tax accountant or tax attorney that all deferred payment loans, cash flow only loans or partnership loans have a reasonable expectation to be repaid, if the loan/s is/are **kept in basis**;
- an approved Resident Services Plan;
- copy of the Property Management Plan acceptable to OHCS and Permanent lender;
- a Certification from the Sponsor's architect; if applicable, and,
- any other documentation OHCS requests based upon representations made in the application.

Payments or charges over and above what is represented to OHCS in the application(s) or other documents and misrepresentations of any sort will be subject to remedial action at OHCS' discretion. In instances where there are unsubstantiated costs or charges, OHCS may request a third party audit at the expense of the developer before action on the project's Placed-In-Service application.

Recordation of the Declaration

Once OHCS has received and reviewed all necessary documentation, a determination of the final tax credit allocation amount will be made. OHCS will then prepare an Attorney General approved Declaration of Land Use Restrictive Covenants. The Sponsor will be required to record the Declaration and return a copy of the recorded Declaration to OHCS. If the Sponsor fails to properly record and return the original Declaration, OHCS may revoke the tax credits.

Issuance of the IRS Form(s) 8609

As soon as OHCS receives the recorded Declaration, the IRS Form(s) 8609 will be prepared. The Form(s) are then issued to the project owner. These forms are required for the credit to be claimed.

Compliance

All LIHTC projects are subject to compliance monitoring and reporting procedures as outlined in OHCS's Low-Income Housing Tax Credit Compliance Manual. Monitoring and reporting procedures are incorporated as part of the Qualified Allocation Plan. The monitoring procedures have been established to meet the requirements of IRC Section 42 and are subject to amendment to conform to Internal Revenue Service compliance monitoring requirements. OHCS' compliance procedures include requirements for annual reporting and certification by owners, random inspection of a reasonable number of projects each year to review project resident files, conducting random resident interviews and making physical unit inspections, and notification to the IRS in the event of any noncompliance findings.

In addition to application and reservation charges, owners are required to promptly pay specified compliance monitoring charges associated with inspecting or auditing sites, low-income certification and the supporting documentation and rent records as required. Specific compliance guidelines, monitoring and reporting requirements and charges schedules are included in the Low Income Housing Tax Credit Compliance Manual, which is available to all project owners upon request.

Random Audits of Costs on LIHTC Projects

As the state agency responsible for the LIHTC program in Oregon, OHCS has an obligation to affirm to the federal government that information reported by project sponsors, developers and owners is correct. OHCS may decide to commission on a random basis financial audits of completed LIHTC projects to verify that project costs as identified in final cost certifications are accurately represented.

Calculating the Amount of Tax Credit

The maximum annual tax credits for which a project is eligible equals the project's qualified basis multiplied by the applicable tax credit percentage. **The actual tax credit OHCS awards cannot exceed the amount it determines necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the project's credit period as well as the extended use period, in accordance with the policies outlined the QAP at the time an offer to reserve credits is made.** This financial evaluation of the project includes, but is not limited to, establishing the net operating income, including the appropriate vacancy factor and reasonable operating reserves. Tax credits allocated to a project are available to the project's owner annually for a ten-year period.

Eligible capital costs allowed in a project's eligible basis generally include the cost of acquisition of an existing building, site surveys, engineering studies, architectural specifications, relocation expenses, certain legal and accounting services, insurance premiums, construction period interest and taxes, developer fees, general contractor fees and other construction-related costs.

In establishing a project's eligible basis, a project owner should distinguish the costs used to determine the basis of property from expenses, which are costs deducted in the year they are paid or incurred, and costs which must be amortized. Costs that must be amortized may include organizational costs expended in forming a corporation or partnership and expenditures for permanent financing, such as points charged on the permanent loan. Expenditures that do not directly relate to the construction of the project, such as syndication fees for selling an equity interest in a project and the legal and accounting expenses that relate to that syndication would not be included in a project's eligible basis. These costs would be permanently capitalized, expensed or amortized depending upon the accounting treatment. Applicants are encouraged to examine the IRS Audit Guide for more information.

Project buildings located in qualified census tracts or difficult to develop areas or projects that meet the criteria of the State's Basis Boost may be eligible to an increase in of the project's eligible basis. Specifically, the project owner, in the case of a newly constructed building, multiplies the eligible basis by up to 130 percent. In the case of substantial rehabilitation of an existing building, the project owner multiplies the eligible basis of the rehabilitation expenditures by up to 130 percent, but not the eligible basis arising from the cost of acquiring the building.

The Sale of Tax Credits

Owners of a tax credit project may syndicate the tax credits to limited partner investors who will contribute equity for the project in return for the use of the tax credit and other tax benefits generated by the project. Usually, the project sponsor retains ownership in the project and acts as the general partner of the limited partnership.

OHCS will use: a) current market guidelines, b) previous syndication data available, c) proposed syndicator data, and d) syndication or partnership agreement, if available, to estimate the proceeds anticipated from the sale of tax credits.

LIHTC Construction and Rehabilitation Standards

Section 42 (LIHTC) requires that HUD 24 CFR 5.703 be followed for all projects beginning January 1, 2001. This citation defines physical condition standards that must be met in order for a project and/or unit to be considered decent, safe, sanitary, and in good repair. These standards are summarized below. Consult 24 CFR 5.703.

The Site: Site components such as fencing, retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not

be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulation of trash, vermin or rodent infestation or fire hazards.

Building Exterior: Each building on the site must be structurally sound, secure, habitable and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls and windows where applicable, must be free of health and safety hazards, operable and in good repair.

Building Systems: Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

Dwelling units: Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the unit must be free of health and safety hazards, functionally adequate, operable and in good repair. The dwelling unit must have hot and cold running water (where applicable), including an adequate source of potable water. SRO units need not contain water facilities. If the dwelling unit contains its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and disposal of human waste. The dwelling unit must contain at least one battery-operated or hard-wired smoke detector in proper working condition on each level of the unit.

Common Areas: The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. These areas should be free of health and safety hazards, operable and in good repair. In this context, common areas include, but are not limited to: basements, garages, carports, common restrooms and kitchens, closets, utility rooms, mechanical rooms, community rooms, day care areas, halls, corridors, stairs, laundry areas, offices, porches, patios and trash collection areas. These standards are particularly relevant to congregate housing, independent group homes and single room occupancy units where the individual dwelling units do not contain kitchen and/or bathroom facilities.

Health and Safety Considerations: All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to: air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead based paint. The housing must comply with all requirements related to the evaluation and reduction of lead based paint hazards and have available proper certifications of such as per 24 CFR part 35.

TECHNICAL ASSISTANCE MEMORANDA FROM THE IRS

Periodically the Internal Revenue Service releases technical assistance memoranda and private letter rulings that impact administration of the Low Income Housing Tax Credit Program. Applicants are encouraged to consult knowledgeable sources to stay informed of current developments that impact the LIHTC program.

Developer Fees

IRS takes the position that, to the extent that a developer's services relate either (1) to the acquisition of land or (2) to those land preparation activities which would not qualify for eligible basis, then that portion of the developer fee would not be included in eligible basis. The National Office of the IRS has not ruled on this topic.

Good Cause Eviction

The IRS ruled in Revenue Ruling 2004-82 that Low-Income Housing Tax Credit units under Section 42(h)(6)(B)(i) requires that an extended low-income housing commitment include a prohibition during the extended us period against (1) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit (no-cause eviction protection) and (2) any increase in the gross rent with respect to the unit not otherwise permitted under §42.

Organization/Syndication Costs

If the developer is involved in finding an investor limited partner or assists in the negotiation of the partnership agreement, the portion of the developer fee associated with this activity cannot be included in eligible basis.

The IRS feels that expenses associated with

- Preparing and negotiating a partnership agreement and
- Preparing cash flow and tax projections to be used by the general partner and the investor limited partners are not part of eligible basis.

Nixon Peabody has proposed as a solution that the developer not perform any of these activities but rather establishes a separate entity to do this. Again, you may want to consult your legal counsel to discuss this.

Land Preparation Costs

- Land preparation costs, inextricably associated with the land, are added to the cost of the land and in general may not be included in eligible basis.
- Costs associated with land preparation that are inextricably linked to the building are added to the cost of building construction and may be included in eligible basis. These costs include, but are not limited to, digging spaces and trenches for a building foundation and utilities.
- Project owners should seek professional advice when determining which costs may be included in eligible basis.

LIHTC DEFINITIONS

Annual Tax Credit: The amount of credit allocated to a project. The credit is available annually to the sponsor for a period of ten years. The amount of credit cannot exceed what the Department deems necessary for the project's financial feasibility, or the amount the project is eligible to receive.

Applicable Fraction: Equals the lesser of the "unit fraction" or the "floor space fraction." The "unit fraction" is calculated by dividing the number of low-income units in a building by the total units in the building, and the "floor space fraction" is calculated by dividing the total floor space of the low-income units in a building by the total floor space of the residential units in the building.

Applicable Tax Credit Percentage: The percentage used in the calculation of the amount of tax credit available to a project, depending upon its development and financing characteristics. A qualified low-income housing project may be eligible for one or both of two types of credit. A 30 percent net present value (NPV) tax credit applies to new construction and substantial rehabilitation that receive federally subsidized financing as well as to the acquisition of eligible existing buildings, regardless of the financing source. A 70 percent NPV applies to new construction and substantial rehabilitation that do not receive federally subsidized financing. Consequently, a single project may receive two rates of tax credit.

Compliance Period: The period of 15 taxable years beginning with the first year of a building's ten-year "credit period." In addition, each building must have an extended low-income housing commitment which requires, at a minimum, a 15-year extended use period that begins on the first day of the compliance period and ends 15 years after the close of the compliance period.

Credit Period: The period of ten taxable years beginning with the taxable year in which the building is placed-in-service or, at the election of the sponsor, the succeeding taxable year, but only if the building is a qualified low-income building at the close of the first year of the period. The credit period for the acquisition of an existing building may not begin until the first year of the credit period for the rehabilitation expenditures for that building.

Deferred Developer Fee: The portion of the developer fee taken over a 10 to 15 year period of time. The deferred fee must be able to be repaid within the specified timeline, and is considered a secondary debt.

Depreciable Costs: The development costs incurred in connection with a capital asset that is subject to a loss of value brought about by age, physical deterioration, or functional or economic obsolescence.

Eligible Basis: Consists of the eligible expenditures, new construction, rehabilitation and acquisition, incurred up to the close of the first taxable year of a project's "credit period." Eligible basis includes: the adjusted basis of depreciable property (without regard to depreciation); certain deductions from these costs must be made, including but not limited to: (1) the cost or value of the land underlying the project; (2) the value of federal grants used to finance the project; (3) tax credits received under certain provisions of state and federal tax law; and (4) the amount of "nonqualified non-recourse financing" used in the project.

Eligible basis also includes the cost of personal property for use by the residents, such as major appliances. A project owner may also include the cost of facilities and extra amenities such as common areas, parking facilities and recreation equipment in the project's eligible basis if there is no separate fee for the use of the facilities and they are available to all residents on a comparable basis. Costs of the residential units in a building which are not low-income units may be included,

but only if such units are not above the average quality standard of the low-income units, or if such excess costs are deducted from the eligible basis. Project buildings located in "qualified census tracts or difficult to develop areas" are entitled to an increase in their eligible basis.

Eligible Existing Building: A taxpayer may normally receive a 30 percent NPV credit for the acquisition of an existing building if (1) it was purchased from an unrelated entity that owned it for at least ten years and kept it in active use; (2) for the ten-year period preceding the purchase it did not undergo any rehabilitation in excess of 25 percent of its basis; and (3) no 15-year compliance period is in effect for any previously received low-income housing tax credits.

Federally Subsidized Building: A building is deemed to be federally subsidized if it is financed by federal tax-exempt bonds, federal grants, or below market federal loans.

Gross Rent: An amount that does not exceed 30 percent of the applicable income limitation. Gross rent includes an utility allowance determined by the Secretary of the U.S. Department of Treasury; but does not include any payment under Section 8 or any comparable rental assistance program; and does not include fees for supportive services paid by governmental or nonprofit organizations if such programs include rental assistance and rent is not separable from the amount of assistance provided for supportive services; and does not include any rental payments to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers Home Administration under Section 515 of the Housing Act of 1949.

Supportive services, as used in the paragraph above, means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in hospitals, nursing homes or intermediate care facilities for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building providing transitional housing to the homeless, this term includes any service provided to assist residents in locating and retaining permanent housing.

Nonqualified Non-recourse Financing: General. Nonqualified non-recourse financing means any non-recourse financing which is not "qualified commercial financing." Financing is non-recourse if the borrower is not personally at risk to repay the loan or if the lender has an interest in the financed project (other than as a creditor). The borrower may be protected against loss on a loan through guarantees, stop-loss agreements or other similar arrangements.

Placed-In-Service: The Placed-In-Service date for a new or existing building is the date on which the building is ready and available for its specifically-assigned function. This is usually the date the first unit in the building is certified as being suitable for occupancy under state or local law. Substantial rehabilitation expenditures are treated as Placed-In-Service at the close of any 24-month period over which the expenditures are aggregated.

Qualified Allocation Plan: The plan, signed by the Governor, establishes the process by which the Department will allocate Tax Credit to qualified projects. This is available upon request from the Department, or can be downloaded from the OHCS web page at: http://www.ohcs.oregon.gov/OHCS/HRS_LIHTC_Program.shtml.

Qualified Basis: The portion or percentage of the eligible basis that qualified for the tax credit becomes the qualified basis. The "eligible basis" is multiplied by the "applicable fraction" to obtain the amount of "qualified basis" attributable to the housing project.

Qualified Census Tract or Difficult Development Area: Projects located in difficult to develop areas and qualified census tracts are eligible for additional credit. The maximum credit to such projects is calculated by increasing the eligible basis by 130 percent. To determine if the project is

located in a qualified census tract, contact Portland State University Center for Population Research and Census at 1-503-725-3922, the local city hall or look for this data in the Qualified Census Tracts or Difficult to Develop Areas section.

Qualified Commercial Financing: Financing generally constitutes qualified commercial financing when (1) seller of the financed property is not a "related person" to the borrower; (2) amount of the non-recourse financing does not exceed 80 percent of the property's credit base; and (3) financing is borrowed from a "qualified person" party or is borrowed or guaranteed by a governmental entity. A "qualified person" is a party actively and regularly engaged in the business of lending money that is not (1) a "related person" to the borrower; (2) the seller of the financed property or a "related person" to the seller; or (3) a party receiving a fee from the borrower's investment in the property or a "related person" to such a party. Certain "qualified commercial financing" and "qualified person" requirements do not apply when the borrower is a qualified nonprofit organization.

Qualified Low-Income Housing Project: Any project for residential rental property that meets the "20-50 Test" or the "40-60 Test," as elected by the taxpayer. This election, once made, is irrevocable.

- The 20-50 Test. This test is satisfied if at least 20 percent of the residential units in a project are both rent-restricted and occupied by individuals whose household income is no more than 50 percent of the area median gross income.
- The 40-60 Test. This test is satisfied if at least 40 percent of the residential units in a project are both rent-restricted and occupied by individuals whose household income is no more than 60 percent of the area median gross income.

Qualified Nonprofit Organization: An organization described in IRC Section 501(c)(3) or 501(c)(4) that is exempt from federal income tax under IRC Section 501(a) if the Department determines the organization is not affiliated with or controlled by a for profit organization and an exempt purpose of such organization includes fostering low-income housing.

Related Entity/Person: Related persons include, but are not limited to (1) members of a family; (2) a fiduciary and either a grantor or a beneficiary of a trust; (3) a party and a federally tax-exempt organization that the party, or members of the party's family, controls; (4) a party and either a corporation or a partnership in which the party has more than a 50 percent interest; (5) two business entities, either corporations or partnerships, where a party has more than a 50 percent interest in each; (6) two corporations that are members of the same controlled group; and (7) two parties engaged in trades or businesses under common control.

Substantial Rehabilitation: Rehabilitation projects qualify for the 70 percent present value credit if they have not received any federal financing subsidies and have total rehabilitation and related expenditures attributable to or benefiting one or more units (incurred over a 24-month period ending when the buildings are placed-in-service) in an amount equal to the greater of: not less than ten percent of the adjusted basis of the building; or \$3,000 or more per low-income unit.

Tax Credit: Under the federal income tax code, a tax credit is a dollar-for-dollar reduction in the tax liability. A tax credit is subtracted after the amount of taxes is calculated. The use of tax credits can be limited by the application of the passive loss provisions, the alternative minimum tax and limits on the use of general business credits.

Tax Credit Syndication: Owners of an LIHTC project may sell (syndicate) the tax credits to limited partner investors who contribute equity for the project in return for the use of the tax credit and other tax benefits generated by the project. The project developer usually retains ownership in the

project and acts as the general partner. The limited partner investors are usually not involved in the management of the project, but have concerns that the project be maintained in compliance with tax credit regulations. If not, they may be subject to tax credit recapture and penalties.

Transitional Housing for Homeless: A housing unit does not qualify for the LIHTC program as a low-income unit if it used on a transient basis. Transitional housing for the homeless is not considered to be used on a transient basis if the units contain sleeping accommodations, bathroom and kitchen facilities and are located in a building in which a governmental entity or qualified nonprofit organization provides residents with temporary housing and supportive services designed to assist them in locating and retaining permanent housing and is used exclusively to facilitate the transition of homeless individuals (as the term is used in Section 103 of the Stewart B. McKinney Homeless Assistance Act) to independent living within 24 months. The qualified basis of a building that provides transitional housing for the homeless may be increased by the amount of the eligible basis of the building that is used throughout the year to provide supportive services designed to assist residents in locating and retaining permanent housing to the extent this amount does not exceed 20 percent of the building's other qualified basis.

LIHTC Market Analysis Requirement: This information has been moved to the Market and Need Assessment section of the Application Instructions.

LIHTC Program Rents and Incomes

The most recent (2009) LIHTC Program (Multifamily Tax Subsidy Program) Rents and Incomes can be downloaded from the web at:

http://www.ohcs.oregon.gov/OHCS/HPM_income_rent_limits.shtml