



**Oregon Housing and Community Services**

## **Qualified Allocation Plan**

**2007**

# **LOW INCOME HOUSING TAX CREDIT PROGRAM**

June 28, 2006



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**Approval of the State of Oregon  
2007 Low Income Housing Tax Credit Program  
Qualified Allocation Plan**

I, Theodore R. Kulongoski, Governor of the State of Oregon, do hereby approve for implementation the 2007 Low Income housing Tax Credit Qualified Allocation Plan as presented to me by the Oregon Housing and Community Services Department under the provisions of IRC Section 42, Executive Order EO-87-06 and OAR Chapter 813, Division 90.



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Governor Theodore R. Kulongoski

6/28/06  
Date

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**LIHTC QUALIFIED ALLOCATION PLAN**  
For the Period Beginning with the allocation of 2007 Tax Credits

**ADMINISTRATIVE AUTHORITY**

The Low-Income Housing Tax Credit Program was created under the provisions of the Tax Reform Act of 1986. 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” or “OHCS”). Under Executive Order EO-87-06 the Governor of Oregon has designated OHCS as administrator of the Low-Income Housing Tax Credit (LIHTC) Program with the responsibility of allocating the State's annual per capita and non-competitive credit authority in accordance with an approved Qualified Allocation Plan. Section 42 of the Internal Revenue Code (“IRC”), as amended, specifies the requirements for said Qualified Allocation Plan. The Department shall further administer the Program in accordance with OAR Chapter 813, Division 90, and shall maintain a record of allocations and the balance of Credit Authority remaining for each calendar year. The records shall account separately for Credit Authority set-asides under OAR 813-90-025.

This Qualified Allocation Plan constitutes a complete rewrite of the Qualified Allocation Plan previously approved on July 22, 2004. Public hearings to gather comment on the plan were held on April 20, 2006 and April 25, 2006 in Portland and Eugene, respectively, after appropriate notice as required by law.

Pursuant to ORS 456.555(6)(a), the State Housing Council (the “Council”), with the advice of the Director of the Department, sets policy and approves or disapproves rules and standards for housing programs of the Department. The Council’s Oregon Affordable Housing Policy Statement that outlines these principles is included in Exhibit “B”. The specific policy changes made to the 2007 QAP are included as Exhibit “F” in the 2007 QAP. The State Housing Council has reviewed the revised plan contained herein on June 2, 2006 and has recommended it for the Governors approval. The Honorable Theodore R. Kulongoski, Governor of the State of Oregon, approved this Qualified Allocation Plan on June 28, 2006, which will become its effective date.

## **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 that 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, syndicators recruit the investors, and ownership rights are controlled by limited partnership agreements.

This Allocation Plan was written to adhere to the established evaluation criteria and preference categories mandated by the federal tax credit program regulations (Section 42), as amended (both proposed and final).

### **Qualified Allocation Plan Overview**

Oregon's Low-Income Housing Tax Credit Qualified Allocation Plan (QAP or Plan) establishes the administrative process governing the allocation of federal housing tax credits to qualifying developments that address low income housing priorities throughout the state. This process will be described on the following pages, and will cover the following topics:

- LIHTC Program Elements
- LIHTC Administrative procedures
- Application process
- Allocation procedure
- State & Federal LIHTC Policies
- Compliance Monitoring Policies
- Public Comments
- Amendments to QAP

### **Requirements of the Qualified Allocation Plan**

Each state-allocating agency for the federal Low Income Housing Tax Credit is required to publish a plan describing how it intends to award the credit. The requirement that states publish a plan was established in the Omnibus Reconciliation Act of 1989. The plan is called the Qualified Allocation Plan or QAP.

The state of Oregon, Oregon Housing and Community Services (OHCS or Department), is the allocating agency for tax credits. OHCS is responsible for preparing the allocation plan and making it available for review by interested members of the public before approval by the Governor.

Section 42 of the Internal Revenue Code, is the federal statute governing the tax credit program. In accordance with Section 42 (m), each state-allocating agency must include the following in the allocation plan:

- Selection criteria for projects receiving tax credit allocations
- Preference for projects serving the lowest income tenants and for projects serving tenants for the longest period of time
- Preference for projects located in qualified census tracts (QCT), the development of which will contribute to a concerted community revitalization plan.

In addition, Section 42(m) states that the selection criteria must take into consideration the following project, community, or development team attributes:

- Location
- Need for affordable housing
- Project characteristics
- Sponsor capacity
- Tenants with special needs as a target population
- Public housing wait lists
- Individuals with children as a target population
- Projects intended for tenant ownership

Projects requesting an allocation of Tax Credits must meet at least one of the preferences listed above or the project will receive a deduction of one-point (1) on their competitive application.

### **Documentation of Discretion**

OHCS may, at its discretion; 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.

### **Public Comment and Hearing Requirements**

The Draft Qualified Allocation Plan is subject to a 30-day public comment period. Opportunities to review the Draft QAP are announced via posting to the OHCS website, mailing to interested parties upon request, Department stakeholder meetings (public hearings), and an announcement(s) published in the *Oregonian* Newspaper. The Department accepts written comments either through letters or e-mail to [karen.clearwater@hcs.state.or.us](mailto:karen.clearwater@hcs.state.or.us) or [susan.bailey@hcs.state.or.us](mailto:susan.bailey@hcs.state.or.us). Testimony at the two scheduled public hearings.

### **Amendments to the Qualified Allocation Plan**

Upon approval of the overall plan by the Department, the State Housing Council and the Governor, the Department may make minor and technical amendments to this Allocation Plan when changes are necessary to administer the Low-Income Housing Tax Credit



Program to effectively serve Oregon's low-income housing needs, and to conform with amendments to IRC Section 42. Major amendments to the QAP require formal approval and a public process.

**If any provision of this Allocation Plan (and documents included herein by reference) is inconsistent with the provisions of amended IRC Section 42, including any future amendments thereto, or any existing or new State administrative rules governing the LIHTC Program, the provisions of IRC Section 42 and/or the State Administrative Rules take precedence and the plan will be amended accordingly.**

The State Housing Council approved the revised plan contained herein on June 2, 2006. Public hearings were held on April 20 and 25, 2006 after appropriate notice was provided. The 30-day comment period will begin on April 10<sup>th</sup> 2006 and close on May 10<sup>th</sup>, 2006 at 5 PM.

### **Program Annual Allocation**

Credits are provided to states to allocate to eligible affordable housing projects. Currently, each state is allocated annual tax credits in an amount equal to \$1.90 per state resident as of 2005 with annual increases indexed to inflation. These credits are considered to be under the State's per capita credit authority and are a limited and scarce resource. Oregon is also provided with access to tax credits associated with the State's Private Activity Bond Authority. These credits are not subject to the per capita credit authority but are only available to projects that are financed using tax-exempt bond proceeds. Credit types are more specifically defined below:

### **Types of Credits**

- **9% Credits**  
Reflect approximately 70 percent of the qualified basis for new construction or substantial rehabilitation of qualified low-income buildings. Are available for the cost of a new building construction or a building substantially rehabilitated without a "federal subsidy".  
The 9% credit is subject to the per capita credit authority and is generally awarded annually under a competitive application process called the Consolidated Funding Cycle (CFC). The 9% credit may also be awarded via other competitive processes (such as an RFP) from time to time.
  
- **Competitive 4% Credits**  
Reflect approximately 30 percent of the qualified basis of acquired buildings that are substantially rehabilitated, and are used for federally funded developments such as Rural Development 515 projects.

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1 Federal subsidy is defined by Section 42 of the IRC as several forms of financing, including, but not limited to, HOME funds (unless certain specific circumstances are present), any debt obligation the interest of which is exempt from tax under IRC§103 or a direct or indirect federal loan, if the interest rate is below the Federal Applicable Rate in effect at the time the loan was made, and RD Section 515 funds.

- Non-competitive 4% Credits  
Reflect approximately 30 percent of the qualified basis of newly constructed or acquired buildings that are substantially rehabilitated and financed with tax-exempt bond proceeds.

Although the terms 9% and 4% are used, the 9% and 4% figures are approximate. The IRS sets the actual credit percentages on a monthly basis. A project can qualify for one of the three credits or a combination of the credits.

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 (that is the 9% and 4% approximations) of the qualified basis may be claimed annually for 10 years as the low-income housing tax credit. The amount of LIHTC that may be awarded to a building is based upon the depreciable cost of the building and the portion of the project that low-income households will occupy and can be no more than needed to make the project financially feasible.

### **OHCS Program Goals**

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, the Department must comply with **federal requirements** and meet the following OHCS program goals:

- Encourage approaches in design, planning, building and financing of low income housing that maintains quality and long term sustainability, durability and ease of maintenance of affordable units,
- Encourage equitable allocation of credits across the state,
- 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,
- Provide a preference for projects located in QCTs, 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 or redevelopment. Any of these activities must contribute to a concerted community development plan,

In addition, the Department 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 for families with children,
- Housing near employment centers,
- Other as determined locally or by the Department and as identified in the application materials.

### **Overview of the Credit Application and Allocation Process**

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. Rent may be further restricted based upon the limitation selected and other representations made in the application to the Department,
  - 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 \$3,000 per unit or 10 percent of the unadjusted basis of the building, whichever is greater, and,
- operate under the program's rent and income restrictions for a minimum of 30 years pursuant to extended use agreements.

To apply for tax credits, a developer must submit a detailed proposal to the Department on the form prescribed. The specifics of the application contents are available through the Department and generally include the following:

- Description of the housing project proposed, including the total number of units and the number expected to be LIHTC units,
- Sources and uses of funding,
- Development costs,
- Operating expenses and income,
- Project need, a market study and resident services to be offered,
- Other information as identified in the application.

The Department application process was created in accordance with the requirements of Section 42 of the Internal Revenue Code to select proposals for tax credits awards. The application process is more fully described later in this document. In evaluating projects, the Department must consider proceeds or receipts expected to be generated through tax benefits, as well as the reasonableness of the development hard and soft costs. In general,

the IRS expects the Department 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 project is the financing gap. Tax credits may be used, subject to allocation requirements of the QAP, to attract the equity investment to fill this gap.

Once credits have been awarded to a developer, the developer typically sells the credit to private investors. The private investors use the credits to offset taxes otherwise owed to the federal government. The money paid by the private investors for the credits are 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 or other debt to be repaid from rental income.

Tax credits are considered awarded to a project at the time the department issues a Carryover Agreement or 8609's. Owners must place the project in service no later than December 31 of the credit 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 the Department in its application for credits and in accordance with IRS regulations**. Individual and corporate investors must mail the original completed IRS Form 8609 (issued by the department) the, "Low Income Housing Credit Allocation Certification" for the first year they claim the credits to Internal Revenue Service, PO Box 331 Attn: LIHC Unit, DP 607 South Philadelphia Campus Bensalem, PA 19020, a copy of the completed 8609 should be returned to OHCS Attn Housing Program Management, PO Box 14508 Salem, OR 97309-0409.

Once a project has been placed in service, the Department 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, the Department 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 the Department follows. These regulations are described in the Tax Credit Compliance Guidebook (available from the Department upon request).

## LIHTC PROGRAM ELEMENTS

### **Per Capita Authority (competitive credit)**

The State's per capita tax credit authority, amounts of returned credits and state award of National Pool, are allocated on a competitive basis, based upon project rankings determined during the Consolidated Funding Cycle (CFC) application period(s) or special RFP solicitation. All LIHTC allocations, including any increase in the allocation of a project's per capita credits, will be governed by this plan.

### **Projects Financed with Tax Exempt Bonds (non-competitive credit)**

Credit for buildings financed by tax-exempt bonds subject to volume cap will be determined as per Section 42(h)(4). If 50 percent or more of a project's aggregate basis of buildings and land are financed with tax-exempt bonds, the project may receive a maximum 30 percent present value credit calculated against the project's qualified basis without causing a reduction in the State's annual credit authority. Sponsors of projects financed by tax-exempt bonds must make application for tax credits, and such projects will be evaluated in a manner consistent with this plan. These projects will be subject to project evaluations. Consideration will be given to the sources and uses of the funds, any proceeds generated by reason of tax benefits, the total financing planned for the project, and the percentage of the housing credit dollar amount used for project costs other than soft costs. Provided the Department approves the sponsor's application, a Tax Credit Determination letter will be issued stating the amount of credit available to the project, and a Reservation and Extended Use Agreement will be executed.

Tax credit applications for projects financed with tax-exempt bonds may be filed **at any time during the year**. Sponsors must allow reasonable time for review and response (generally 90 days for review and recommendation). Projects financed with tax-exempt bonds seeking the 4% tax credit will be denied if the criteria outlined herein and presented in the required application are not met to the Department's satisfaction.

### **Project Eligibility and Considerations**

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 consist of **residential rental property**. For the purposes of Section 42, the definition attributed to "residential rental property" is generally the same as applied to tax-exempt rental housing bonds. This definition focuses on the following issues:

- Residential rental properties must include separate and complete facilities for living, sleeping, eating, cooking and sanitation. Unlike the requirements for units financed with tax-exempt bonds, certain single room occupancy housing used on a non-transient basis may qualify for the credit even though such housing may provide eating, cooking and sanitation facilities on a shared basis.
- 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 buildings are rent-restricted. This includes buildings which would (but for their lack of proximity) qualify as a project for the purposes of Section 42, are owned by the same party, have a management plan pre-approved by the Department, and are financed under a common plan of financing.
- 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 in the credit computation.
- Residential rental units must be available for use by the general public in a nondiscriminatory manner. The Department of Housing and Urban Development (HUD) provide definitions and authority regarding public use and discrimination.

### **Minimum Set-Asides**

For a project to qualify for a credit award, it must meet a minimum low income set aside requirement. The minimum set aside requirement must be met no later than the close of the first year of the credit period for such building.

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 that 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.

Projects previously awarded credits that are currently in their initial compliance periods or and in their extended use period, will not be eligible to apply for additional credits until the extended use period is over unless the additional credits will provide a clearly demonstrable benefit to the tenants (beyond that promised in the original application).

Projects with serious construction or construction material concerns may be eligible for additional credits within the restrictions of Section 42 and at the discretion of the Department.

### **Eligible Applicants**

There are no restrictions on who may apply to the Department for an allocation of LIHTC. However, please refer to Allocation Procedures under Organizational Capacity to determine eligibility.

### **Application Period**

Applicants for annual per capita competitive credits must submit a complete Application for Low-Income Housing Tax Credits during the specified application periods within the Department's Consolidated Funding Cycle, or as announced by any request for proposals. For projects financed with tax-exempt bonds, applications can be received at any time as long as costs have been, or will be, incurred in the calendar year of application.

### **Long-Term Affordability**

All projects must commit to an extended use term of a minimum of 30 years of affordability. Projects with tax-exempt bond financing must commit to an extended use term of the greater of 30 years or the outstanding term of the bonds. The owner must file a Restrictive Covenant (provided by Oregon Housing & Community Services) to waive the right to petition the Agency to terminate the extended use term as described in Section 42 of the Internal Revenue Service Code. Additional consideration will be given to projects, which agree to an extended use period beyond the minimum 30 years.

### **Financial Feasibility**

Basic criteria includes but is not limited to:

- Debt Service Ratio as recommended by best practices at 1.15 to 1.20, (1.10 for USDA Rural Development projects).
- Loan to Value Ratio to maximize debit and minimize the use of the competitive tax credit.
- Construction Costs per Square foot as outlined in the CFC application.
- Developer Fees in accordance with department policy discussed later in this plan.
- Reasonable operating expenses, as justified by the application with supporting documentation for assumptions.
- Replacement reserves as of \$250 per unit per year for new construction of senior projects and \$300 per unit per year for all rehabilitation and new construction projects not for seniors..
- Operating reserves of 4 to 6 months of expenses (minimum). Reserves less than or in excess of this may be approved upon department review and approval after award.
- Itemized operating expenses and vacancy rate projection must be provided and supported by reasonable and credible evidence.

Project evaluations will be conducted to determine the appropriate amount of tax credits for which the project is eligible. Pursuant to amended IRC Section 42, credits reserved for a project may not exceed the amount necessary for the financial feasibility of the project and its viability throughout the credit period. As mandated by IRC Section 42, a project evaluation will be made for each complete application received by the

Department, and further evaluations will be conducted for tax credit reservation recipients as they proceed through the allocation process as a means to verify eligibility and the need for the credit allocation.

- Upon receipt of the **Consolidated Funding Cycle Application, or Initial 4% Credit Application;**
- Prior to providing a Tax Credit **Carryover Allocation** (for competitive, per capita credit requests); and
- No earlier than 30 days prior to issuance of **IRS Form(s) 8609.**

### **Market Assessment**

IRC Section 42 requires a comprehensive market study for each Low Income Housing Tax Credit project. Beginning with the Spring 2007 Consolidated Funding Cycle the market study must be conducted by one of OHCS's approved Market Analysis, not be more than 6 months old prior to application and be submitted with the application. The applicant will pay for the study and OHCS will review and approve or reject the study prior to carryover for projects receiving LIHTC credits awarded on a competitive basis. The market studies for the 4% non-competitive tax credits will be reviewed and approved or rejected prior to approval of the credit award. A disinterested party approved by the allocating agency must conduct the study.

LIHTC applicants can download the list of approved Market Analysts at [http://www.ohcs.oregon.gov/OHCS/HRS\\_LIHTC\\_Program.shtml#Market\\_Analysts](http://www.ohcs.oregon.gov/OHCS/HRS_LIHTC_Program.shtml#Market_Analysts) or can contact the Department to obtain a list of approved market analysts. The analysts **must** conduct the market study in such a manner as to address the items described in the Consolidated Funding Cycle Application, the 4% LIHTC Application or Multi-Family Rental Housing Risk Sharing Program Application, Elderly and Disabled application and/or any additional program materials adopted or used by the Department. The market study may be included in an appraisal as long as the appraiser has followed the instructions provided by the Department (refer to instructions to appraiser) and is prepared by a Department approved market analyst. Following its review of the market study, the Department, at its sole discretion, may request additional market information from the applicant and additional comment from the local government before reserving tax credits, and may decline to reserve credits if the proposed project has a potential to disrupt the local housing market.

The Department may reject an application and revoke the credit reservation if it determines, in its sole discretion, that based on information submitted in the applicant's market study or information obtained by the Department from other sources, market demand and conditions do not justify the project as proposed. The Department will consider all facts and circumstances in making this determination, including the possible disruption caused by unneeded units entering the market.

### **Resident Services**

Sponsors, who receive Department resources, including but not limited to LIHTC, must include in their affordable housing development a provision for residents to access



services appropriate to the identified needs of the target population. The anticipated outcomes of the resident services plans are:

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

Project evaluation will reward projects offering appropriate resident services. Sponsors are encouraged to build services provisions into their operating expenses.

Resident services are not intended to be limited to services provided on site, to residents at risk or with special needs, nor does it make participation in services mandatory for residents. It is intended to be a support system integrated into the housing and available to all residents, except where other funding sources require it. Resident services can be incorporated into the operation and management in a variety of ways. Common to many models, however, are the goals of helping residents achieve greater social and economic self-sufficiency and an enhanced quality of life. While supportive resident services offer assistance to residents facing a crisis, they should also focus on addressing problems and linking residents to community resources. The most effective resident service program encourages and supports resident participation in the decision making process.

In considering resources available for resident services, sponsors should investigate public and private social service agencies, schools, community directories and consultation with existing community residents. United Way, city or county government, libraries and non-profit agencies often operate resource and referral services. Beyond Shelter, a non-profit agency committed to combating chronic poverty, welfare dependency and homelessness has developed a handbook regarding service-enriched housing. Resources to develop supportive resident services for special needs populations are also available from the Corporation for Supportive Housing.

The required resident services plan is described in the Consolidated Funding Cycle **and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**

**Reservation and Extended Use Agreement (Extended Use Period)**

After receiving an award of credits the owner of the Project will enter into a Reservation and Extended Use Agreement that shall specify, among other things, a minimum applicable unit fraction defined by IRC Section 42 (c)(1)(B) and the rent formula to be maintained for the Project to continue to qualify for the tax credit.

The Reservation Agreement will lock the applicable credit percentage rate (applicable rate) and must be fully executed subject to conditions of the offer letter for a competitive

credit project or in the month in which the bonds are sold for a tax-exempt financed project. Failure to lock the rate at either of these points in time will postpone the rate lock to the Placed in Service date.

The Reservation and Extended Use Agreement shall include a commitment to meet the applicable fraction and rent restrictions for at least 15 years beyond the initial 15-year compliance period, or for the term of affordability and may postpone for a specific time the project owner's rights under IRC Section 42 (h)(6) to terminate the commitment.

**Carryover Application for Competitive Credits:**

**NOTE: Applicants for 4% credits in association with tax-exempt bonds do not need to meet carryover requirements.**

**On or before December 1 (or the next business day) of the tax credit year**, tax credit recipients must submit either an application for tax credit "Carryover Allocation" (if the project is still in the construction process), or a final application indicating "Placed-In-Service" (Certificates of Occupancy/Completion have been received and the project is ready for occupancy by tenants). Projects that receive an allocation in the second half of the calendar year have up to six months to meet the 10% test of the Carryover requirement.

A complete carryover application must be submitted to the Department by December 1 of the credit year or the Department may assess a late charge. The Department will have the right to charge an hourly rate for applications that need additional review due to subsequent submissions or changes to the original application that would require a complete re-review of the application.

**Application for Tax Credit Allocation (Placed-In-Service Projects) shall include:**

All LIHTC applicants are required to complete a final application. Any changes from the original application are subject to Department approval. It is strongly advised that this approval be sought prior to or at a minimum in conjunction with submitting the final application. Any change to developer fee from the original application to the final application will require written approval from the Department prior to the final application. Approval will be at the discretion of the Department and will not be unreasonably withheld for justifiable increases in the scope of work, so far as the developer fee does not exceed the Department's approved limitations.

The final application must be submitted to the department within 6 months of the last building receiving their certificate of occupancy or in the case of a acquisition rehabilitation 6 months after the project is determined to be substantially complete. Projects submitting their final applications after the 6 months can be assessed a late charge and an additional review charge if more information is required to complete the review.

1. Final application, including but not limited to:
  - a) Certification of all project costs;

- b) Updated Operating Statement;
  - c) Certification of use of tax credit proceeds; and
  - d) Completed “Final Application Supplement” including documentation of cost changes, updated sources and uses and a 15-year cash flow analysis.
2. Certificate of Occupancy or the appropriate jurisdiction’s Final Inspection Report approving occupancy (indicating the project is suitable for occupancy).
  3. Copy of Cost Certification prepared by a third party such as a certified accountant or legal counsel. Please contact Oregon Housing and Community Services, Housing Resources Section for a sample cost certification format. OHCS reserves the right to higher a third party account to review the cost certification audit if deemed necessary by the Department, Owners will be required to pay for the review.
  4. Certification from the project or inspecting Architect that the project has been built in accordance with the final plans submitted to the Department, i.e., the project is built in accordance with all applicable local, state and federal laws, and those requirements of the Department set forth in this Allocation Plan. (See Exhibit “A” for format.)
  5. Copy of Placement Memorandum, Syndication Agreement or Limited Partnership Agreement indicating tax credit proceeds available to the project together with a contribution schedule.
  6. Copy of on-site property management plan acceptable to the Department and permanent lender.
  7. A copy of a site map with each building identified by address and listing the units by number to be found in each building.
  8. A Resident Services plan for approval if not already approved.

Departmental remedies may include, but are not limited to, rejection of the LIHTC application, termination of processing, failure to issue an IRS form 8609, or issuance of an IRS form 8823. The department may rely upon its own investigations or other information the department deems appropriate.

# LIHTC ADMINISTRATIVE PROCEDURES

## General Administrative Procedures

The QAP utilizes housing priorities pertinent to Oregon as designated by the State of Oregon Consolidated Plan (CP), local jurisdiction Consolidated Plans, or their successor documents, and other information that can demonstrate verifiable housing and community needs and priorities.

## Architectural Requirements

Projects which receive Low-Income Housing Tax Credit Allocations will be constructed and rehabilitated in accordance with the Department's architectural standards as well as all applicable local, state and federal laws, local ordinances and building codes. Tax credits will not be awarded without the Department's architectural review and design concurrence.

Program requirements also include, but are not limited to, the Federal Fair Housing Act Amendments of 1988, which provide specific guidelines for multi-family dwellings with respect to minimum accessibility, adaptability and prohibition of discrimination. Project sponsors will be required to obtain a preliminary certification as in Exhibit "A" from their architect, which must be included on the architectural drawings indicating that the project design meets local, state and federal laws, local ordinances and building codes. At the end of the construction period, an "As-Built" architectural certification in Exhibit "A" will be required before the Department releases "Low-Income Housing Credit Allocation Certification," IRS Form(s) 8609. **The Department assumes no responsibility to inspect developments for compliance with the above-stated construction standards and laws.** Department staff will retain the right to visit developments during the construction period, and sponsors must provide access to the development following a 24-hour notification.

## Application

During the application process, all applicants for tax credit reservations must supply documentation in accordance with specific application requirements. All materials must be complete and delivered to the Department by the established deadlines (see the CFC Application).

All applications for competitive credits will be reviewed under the evaluation process described in the Department's Consolidated Funding Cycle application; this includes competitive 4% credit application or any potential RFP. Offers to reserve competitive tax credits will be presented to those projects that receive the highest ranking in accordance with the evaluation process. Offers to reserve noncompetitive tax credits will be presented to those projects that meet all Department and federal criteria of award.

## Allocation Process

LIHTC applications are reviewed by department staff for completeness, eligibility with federal and state statute and policy. Projects that pass staff review are presented to the Department's Senior Management. The recommendation of Senior Management is

forwarded to the Department Director for approval. Projects seeking additional LIHTC funds may also require Department Senior Management approval and/or State Housing Council approval. Projects are not considered awarded credits until a Reservation and Extended Use Agreement, and where applicable, a Carryover Agreement (for competitive credits) is executed between the project sponsor and the Department. These above mentioned documents are included by reference in the Declaration of Land Use Restrictive Covenants, which establishes the actual LIHTC award and is executed and recorded prior to issuing the IRS 8609 forms.

### **Selection Criteria**

The state established selection criteria to be used by the Department in its decision making for credits covered by this document may include but is not limited to:

- context of affordable housing in the community, proximity to services and amenities appropriate to the tenant population, access to transportation, etc
- housing needs characteristics (as defined by a third party market study)
- market considerations (see market study policy described herein)
- affordability as compared to market rate (preference for projects with affordable rents that are at least 10% below market rents)
- the financial health of the sponsoring organization (based upon annual audited financial statements)
- project characteristics in relation to the population to be housed
- consistency with Department architectural and design guidelines
- sponsor characteristics, capacity to carry out affordable housing development and compliance
- past compliance record, past development record and quality of completed projects
- proposed management agent record of performance
- participation of local tax-exempt organizations
- housing for families with children
- housing in Qualified Census Tracts and/or areas where community revitalization is a local priority
- achievement of a jobs/housing balance
- achievement of community goals for livability
- achievement of goals articulated in the state or local Consolidated Plan
- tenant populations with special housing needs, and
- public housing waiting lists.

Each of these items will be evaluated in the context of a given proposal and the feasibility of that proposal to fulfill each item. All tax-exempt bond financed projects requesting an allocation of LIHTC must adhere to the selection criteria as stated in both the QAP and the LIHTC application materials.

Subsection (h)(4) of Section 42 pertaining to projects utilizing tax exempt financing shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan and application materials

applicable to the area in which the project is located. The Department reserves the right to determine, in its sole discretion, whether the Letters of Interest or Intent, Award Letters, or Commitment Letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment. A change in the financing source or financing terms after reservation of credits may, in the sole discretion of the Department, result in all or a part of the credits being recaptured or reduced by, or returned to, the Department.

The housing credit dollar amount allocated to each building in a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination the Department will examine all aspects of the financial packaging of the application, including but not limited to:

- the sources and uses of funds and the total financing planned for the project,
- any proceeds or receipts expected to be generated by reason of tax benefits,
- the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and
- the reasonableness of the developmental and operational costs of the project. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

## APPLICATION PROCESS

### **Introduction**

The Department has two application processes for the award of LIHTC. One is required for the per capita competitive credit and the other is required for tax-exempt bond financed projects seeking the non-competitive 4% credits. Both applications request identical information in most respects. Where differences exist between the processes, the specific difference will be called out and explained, otherwise, the information below should be considered to be applicable to both processes.

At its discretion, the Department from time to time, may request proposals for applications outside of the normal application process for specifically identified and recognized affordable housing needs.

### **Allocation Protocol: Competitive Credits**

#### **Timetable**

In each calendar year, the Department will hold one application round for forward allocation of tax credits and one application round for current year tax credits. The bulk of tax credits will be forward allocated through the Fall Consolidated Funding Cycle application.

The application for the balance of credits, current year tax credits that have not been forward allocated, will be allocated in the Spring Consolidated Funding Cycle application round.

All applications for the Low Income Housing Tax Credits must be in the format as prescribed by the Department. This is available by contacting the Department at 503.986-2054, or viewing the application at the department website [www.oregon.gov/OHCS/](http://www.oregon.gov/OHCS/).

Applications shall include but not be limited to the requisite supporting data listed below (under Application Requirements) and completion of all forms requested by the Department. Applicants must pay the required Department charges as set forth in the application format at each stage of the application process. The Department will have the authority to request additional information from the applicant as necessary. Incomplete carryover and final applications will not be considered as being on time for purposes of avoiding a late charge.

#### **Set-asides**

The Department will maintain IRS required set-asides and may, from time to time, establish targeted, discretionary set-asides for projects which target specific low-income housing needs or which have certain designated characteristics. These set-asides will be designated in advance as a priority for the Department and will be described in the Consolidated Funding Cycle application or through an advertised Request for Proposals.

- The IRS required non-profit set-aside of 10%
- The Department discretionary 15% set-aside for USDA Rural Development funded Rural and/or Farmworker projects. The set-aside for Rural and/or Farmworker projects may be without Rural Development funding in the project as long as the project states a specific preference for a Farmworker population within the context of The General Explanation of the Tax Reform Act of 1986 (H.R. 3838, 99<sup>th</sup> Congress; Public Law 99-514 (dated 5/4/87)).
- A 25% set aside for preservation projects, preservation projects include but are not limited to those federally financed existing projects where at least 25% of the existing project's units have project based rental assistance or are expiring LIHTC projects which are currently offering rents 10% below market.
- Preservation projects include, but are not limited to: those federally financed existing projects where at least 25% of the existing project's units have project based rental assistance which are currently offering rents below market, such as financing by HUD and USDA Rural Development; projects participating in programs that include the replacement of existing affordable housing units, including the HOPE VI program, as long as 25% of the units have project based assistance. Expiring LIHTC projects are also considered preservation. In funding preservation projects, the Department will give preference to those preservation project where at least 25% of the units have project based rental assistance.

If, in response to applications for a discretionary set aside, the Department is not able to fully allocate to viable applications the amount of credits designated, the Department may allocate the remaining Housing Credits to other qualified Projects which, in its judgment, best achieve the general purposes of the LIHTC Program. Applications under the discretionary set-aside must meet all application criteria.

In 2000, the Department entered into a Memorandum of Understanding with USDA Rural Development. This Memorandum is attached as Exhibit "D". If maintaining the targeted USDA Rural Development funded, Rural and/or Farmworker set-asides in the Department's judgment jeopardizes the ability to effectively allocate credit, the Department may at its discretion eliminate or reduce the set-asides and only adhere to the federally-mandated level for tax-exempt organizations.

Project information must be submitted to the Department at each stage of the allocation process as follows:

1. Initial Application (initial request for LIHTC award, application must be complete to be considered): An application charge as identified in the CFC and must accompany the Initial Application. There shall be no refund of application charge.



2. The applicant must acknowledge acceptance of the Department's offer to Reserve Tax Credits (made after review of the initial application).
3. Execution of Reservation and Extended Use Agreement will establish the parameters of the LIHTC award regarding rent and income restrictions for the project. A reservation charge will be assessed on the estimated annual allocation of credits must accompany execution of this agreement.
4. Carryover Allocation (made if the project will not be completed in the year of the tax credits allocation): An application for a carryover allocation must be submitted by December 1 of the year of the tax credit allocation and include all required documentation. However the time for meeting the 10% test and submitting related documentation, will be the later of six months after the date of carryover allocation, or December 31 of the tax credit allocation year. If the owner has not secured title to the land, nor 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. **Please contact Oregon Housing and Community Services to obtain the carryover application materials required to apply for a carryover allocation or download from the OHCS web site [http://www.ohcs.oregon.gov/OHCS/HRS\\_LIHTC\\_Program.shtml#LIHTC\\_Carryover\\_Application](http://www.ohcs.oregon.gov/OHCS/HRS_LIHTC_Program.shtml#LIHTC_Carryover_Application).**
5. Placed-In-Service/Final Application: (Once the project has received its Certificate of Occupancy by the local jurisdiction, the equivalent local approval for occupancy, or for acquisition and rehabilitation projects, the date of the completion of the rehabilitation).
6. Copy of on-site property management plan acceptable to the Department and permanent lender.
7. A copy of a site map with each building identified by address and listing the units by number to be found in each building.
8. Copy of Placement Memorandum, Syndication Agreement or Limited Partnership Agreement indicating tax credit proceeds available to the project together with a contribution schedule.
9. Execution and recordation of a Declaration of Land Use Restrictive Covenants.
10. Release of IRS form 8609.

All cost certifications prepared by a third party tax professional such as a Certified Public Accountant or Tax Attorney will be required from all applicants at the time of the

Carryover application (i.e., for the 10% test). A cost certification is required with the Final application, as well and in the departments recommended certification format as shown in the carry over application and final application.

Sponsors who have received credit reservation under the competitive process must comply with the policy as stated later in this document under Policy on Applications By Sponsors Who Request Additional Tax Credits After Initial Award. If the Department approves the award of additional credits, developer fees will be held to the same dollar amount as reflected in the initial application.

**Allocation Protocol: Non-Competitive Credits Issued in Conjunction with Tax-exempt Financing**

As a means to ensure that all projects requesting credits in conjunction with tax-exempt bonds are eligible for and have no serious deviation from the QAP, project information must be submitted to the Department at each stage of the allocation process as follows:

- Provide a copy of the 4% application, pre-application or proposal materials submitted for review to the tax-exempt bond issuer. Incomplete applications will not be accepted. The Department reserves the right to provide comment to the bond issuer regarding the use of LIHTC in conjunction with tax-exempt bonds. These comments will be restricted to eligibility for LIHTC based upon criteria outlined in the QAP.
- Initial Application (initial request for LIHTC award, application must be complete to be considered): An application charge as outlined in the CFC and 4% Tax Credit applications must accompany the Initial Application.
- Prior to allocation of bonds from the State of Oregon Private Activity Bond Committee (PABC), an initial application for 4% Low Income Housing Tax Credits must be received and reviewed by the Department. Department comment to the PABC on all tax-exempt bond/4% LIHTC proposals is required prior to bond issuance. These comments will be restricted to eligibility for LIHTC based upon criteria outlined in the QAP.
- The Department may provide written comment regarding the 4% LIHTC application to the bond issuer prior to final approval of the tax-exempt bonds.
- Complete applications with adequate materials for evaluation will be heard by the Department Finance Committee for recommendation to the Director.
- Upon receipt of Finance Committee recommendation and Department Director approval, an Offer to Reserve Tax Credits will be made. The applicant must acknowledge acceptance of this offer within thirty days of its receipt.

- Execution of Reservation and Extended Use Agreement will establish the parameters of the LIHTC award regarding rent and income restrictions for the project. The reservation charge must accompany execution of this agreement.
- Ongoing project monitoring and progress reports are due during the construction and lease up phases of the development
- Placed-In-Service/Final Application: (Once the project has received its Certificate of Occupancy by the local jurisdiction, the equivalent local approval for occupancy, or for acquisition and rehabilitation projects, the date of the completion of the rehabilitation). The department must receive the complete final application within 6 months of the last building being placed in service or in the case of acquisition rehabilitation when the project is determined to be substantially complete. A late charge may be assessed on projects exceeding the 6 month requirement. See the CFC application materials for the amount of the Late Charge. IRS Forms 8609 are released after an executed Declaration of Land Use Restrictive Covenants is recorded against the property.

Applications shall include but not be limited to the requisite supporting data listed below (under Application Requirements) and completion of all forms requested by the Department. Applicants must pay the required Department charges as set forth in the application format at each stage of the application process. The Department will have the authority to request additional information from the applicant as necessary. The Department, at its sole discretion, also may require the payment of a review charge. In determining whether or not to charge such an additional review charge, and the amount thereof, the Department may consider factors including, but not limited to the following: (a) the Department's actual or projected costs in reviewing an application for tax credits and the project related thereto; (b) the extent of underwriting scrutiny performed or deemed necessary by the Department; (c) the amount and nature of staff resources utilized or projected for researching or reviewing a proposal or application; and (d) the amount and nature of outside resources utilized or projected for researching or reviewing a proposal.

Sponsors who have received credit reservations may request additional credits if there is a justifiable increase in project costs, which is directly related to the project's Eligible Basis. If the Department approves additional credit requests, developer fees will be held to the same dollar amount as reflected in the initial application.

**Application Requirements: Both Competitive and Non-Competitive Credits**

- A. Application for Offer to Reserve Tax Credits shall include but not be limited to:
  - 1. Complete application form, as prescribed by the Department for the type of credit being requested, including, but not limited to:
    - a. Complete, detailed breakdown of estimated project costs;

- b. The amount of credit requested, qualified basis calculation, elections made by the Project owner under Section 42 and a complete breakdown of the anticipated proceeds from the sale of tax credits;
  - c. Confirmation of proposed subsidies (e.g., Trust Fund, HOME, CDBG, FHLB, local funding sources, etc.);
  - d. Implementation schedule, including planning, construction and lease-up;
  - e. Complete summary of sources of funds for project;
  - f. Pro forma Operating Statement with corresponding assumptions and justifications;
  - g. Documentation substantiating utility allowance calculations;
  - h. Preliminary Financing Proposals; and
  - i. All application materials and questions must be complete, factual and legible.
  - j. Beginning with the Spring 2007 application a complete Market Study will be required with the application.
2. Description of project, including discussion explaining community need. An independent third party market analysis may be required for all projects receiving a reservation. The Department reserves the right to verify all market information.
  3. Legal description of site. This cannot change in size or description without prior approval of the Department.
  4. A detailed location map, as outlined in the application.
  5. Site plan and preliminary architectural plans, as described in the application materials.
  6. Evidence of initial site control (e.g., purchase agreement, option, land sale contract, evidence from the local government demonstrating their intent to transfer property).
  7. Evidence project is in compliance with local planning and zoning codes applicable to the proposed use of site or evidence of application for conditional use approval, as required by the local jurisdiction. (Note: Sites requiring zoning variances, or where the use is neither allowed outright or conditionally, will not be accepted.)
  8. Resume of development team members.
  9. Most recent annual financial statement of the sponsoring organization.
  10. Certifications or other documentation substantiating evaluation criteria.

11. Applicable Department charges.
12. Nonprofit Organizations (only) - Articles of Incorporation and IRS documentation indicating tax-exempt status has been granted (IRS Form 1023 for 501(c)(3) organizations, Form 1024 for 501(c)(9), or other organizations).
13. A Resident Services Plan for residents in the proposed Project, including a description of how and why those services are appropriate and how those services will be integrated and administered by management.
14. All application information must be complete, factual and legible.
15. A signed certification by the applicant attesting to the validity of the application materials presented.
16. Completion of IRS Form 8821.

Applications under the CFC process, or RFP process and the non-competitive credit process, will be reviewed and ranked according to an evaluation process (see the next section of this document and most current application package), and projects will be selected to receive conditional offers to reserve tax credits. Upon issuing a conditional reservation, the Department will notify the Chief Executive of the designated jurisdiction where the planned housing development is located.

Those projects receiving a conditional offer to reserve tax credits must comply with all conditions outlined in the Offer Letter within 90 days in order to receive a tax credit commitment. Credit reservations offered to, but not accepted by, the Applicant may become available for distribution to other high-ranking Applicant(s). Following the offer to reserve credits; an extension beyond the initial 90-day period may be considered should the Department determine that there are circumstances to warrant this consideration.

The Department may at its discretion, establish a waiting list for projects competing for per capita credits. Projects with high rankings that did not receive an offer to reserve tax credits during the initial application period will be eligible to be placed on a waiting list. Waiting list status expires September 30 of the year for which the project sought a credit allocation (not necessarily the year of the application). The department has established a process for awarding funding to projects that have tied in the ranking process, this will also be used in selecting projects off of the waiting list. The department tiebreaker criteria is outlined in the CFC application.

Applications for non-competitive tax-exempt bond financed credits will be evaluated based upon criteria identical to the CFC criteria. While applicants will not be competitively scored there will be an expectation that projects meet basic standards of

eligibility and community appropriateness. Non-competitive applicants may resubmit applications with corrections.

- B. Requirements for Reservation of Tax Credits shall include:
1. Receipt of all applicable items in A above.
  2. All documentation required to evidence compliance with the Reservation Agreement conditions, may include but are not limited to:
    - a) Evidence of site control/purchase;
    - b) Letter of community support;
    - c) Conditional commitment of construction/permanent financing (sufficiency to be determined by the Department);
    - d) Architectural plans;
    - e) Evidence of compliance with local zoning codes;
    - f) Level I Environmental Study; and
    - g) Payment of 5 percent Reservation Charge.

**NOTE: A Reservation and Extended Use Agreement will be required of all LIHTC applicants.**

Applicants for 4% credits in association with tax-exempt bond financing will enter into a Reservation and Extended Use Agreement concurrent to reservation of credits by the Department Finance Committee and meeting any conditions of award. Applicants for 4% credits must enter into the Reservation and Extended Use Agreement no later than 60 days from the date of the Offer Letter or within the month the Bonds are sold. Applicants for credits subject to the state per capita authority will enter into a Reservation and Extended Use Agreement upon satisfaction of conditions of CFC award as they apply to the credit allocation. The LIHTC fee will be due and payable at the execution of the Reservation and Extended Use Agreement in both cases.

## ALLOCATION PROCEDURE

### Evaluation Process

All projects, including those competing for set-asides through requests for proposals, and both competitive and non-competitive credit applications, will be evaluated according to a process that includes consideration of the State's low-income housing priorities as designated by the State Consolidated Plan, a local level Consolidated Plan, if applicable, (or successor document(s) to the Consolidated Plan) and/or other information that can demonstrate verifiable housing and community needs and priorities, required under amended Section 42 of the Internal Revenue Code (IRC) and any other information the Department deems pertinent to the selection process as identified in the request for applications. IRC Section 42 specific requirements include consideration of:

- A. Project Location;
- B. Housing Needs Characteristics;
- C. Project Characteristics;
- D. Sponsor Characteristics;
- E. Tenant Population with Special Housing Needs;
- F. Tenant populations of individuals with children;
- G. Projects intended for eventual tenant ownership;
- H. Public Housing Waiting Lists;
- I. Participation by Local Tax Exempt Organizations, and;
- J. Resident Services.

Section 42 (m)(B) further states that preference in allocating housing credits be given to:

- projects serving the lowest income tenants, and,
- projects obligated to serve qualified tenants for the longest period of time.

As part of the Departments evaluation process applications will be reviewed based on the following criteria:

#### Market Assessment and Target Population Needs

- Documented market description
- Documented analysis of market trends
- Measurable differences in proposed rents and market rents (preference for a minimum of 10% below market rents)
- Evaluation and understanding of the local affordable housing need
- Housing gap addressed
- Compliance with the Consolidated Plan
- Impact on existing affordable housing developments

#### Affordable Housing Solutions

- How the solution is appropriate for the population to be served (amenities, unit sizes, special features, etc.)
- Extent to which rents in the project are lower than market rents for the area

- Period of affordability (extensions beyond the minimum program requirements)
- Project location to services (commercial and social) and appropriateness of site
- Solution meets program funding requirements of housing credits and other subsidies
- Whether units are to be rented to households with net incomes not exceeding two times the monthly rent.
- Project location in relation to employment opportunities

#### Resident Services

- Method used to identify the specific service needs of the target population
- Description of proposed services including projected results in measurable terms
- Extent of collaboration and coordination of ongoing services after project completion

#### Community/Neighborhood Support

- Community awareness of the project as demonstrated by public or neighborhood meetings or hearings
- Plan to address community concerns
- Development contributions by the community
- Service contributions by the community that are appropriate to the tenant population

#### Organizational Capacity

- Capacity of the sponsor/development team in relation to the scale of the project
- Prior project experience of the applicant
- Prior project compliance with program regulations
- Readiness to proceed
- Asset management of existing projects as evidenced by acceptable project compliance monitoring reports
- Organization financial health

#### Financial Feasibility

- Source of financial estimates
- Reasonableness of assumptions
- Reasonableness of construction and development costs for the community and construction type
- Reasonableness of operating cost
- Grants and tax credit program requirements
- Development fee reasonableness
- Demonstrated need for Department resources



### Program Considerations

- Meets specific program criteria
- Minimal impact on existing residential or commercial tenants
- Reasonable request of program resources
- Eligible uses of resources

**More specific guidelines and criteria regarding the evaluation of applications can be found in the application format (the Consolidated Funding Cycle and/or the 4% Credit Application and/or the Multi-Family Rental Housing Risk Sharing Program and Elderly and Disabled Loan Program Applications and/or any additional program materials adopted or used by the department).**

The above evaluation criteria are presented as considerations the Department makes for each LIHTC proposal. Because each project is so unique, there is no set standard for the criteria; rather, each is considered in the context of the given proposal.

### **“Threshold” Criteria**

The Department has adopted “thresholds” to insure that the funds available are given to projects best able to produce housing in a timely manner.

LIHTC applications will be reviewed for compliance with the following four “thresholds”. The bond-financing threshold is applicable only to 4% credit applications. Applications, which do not meet any or all of the following criteria, will receive a 25-point deduction from their score.

***Bond Financing (for non-competitive only)*** If 50% or more of a project's aggregate basis of buildings and land are financed with tax-exempt bonds, the project may receive a maximum 30 percent present value credit calculated against the project's qualified basis without causing a reduction in the State's annual credit authority. If the project is less than 50% financed with tax-exempt bonds, the credits may be claimed only on the portion of the project being financed by tax-exempt bonds. Sponsors of projects financed by tax-exempt bonds must make application for tax credits, and such projects must address housing needs set forth in the Qualified Allocation Plan. These projects will be subject to project evaluations and the amount of credit offered to said project will be established by the Department. Consideration will be given to the sources and uses of the funds, any proceeds generated by reason of tax benefits, the total financing planned for the project and the percentage of the housing credit dollar amount used for project costs other than soft costs. Provided the Department approves the sponsor's application, a Tax Credit Commitment will be issued stating the amount of credit available to the project.

***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. Control of the project site for a period of time not less than the time period of project affordability is also acceptable.

**Zoning** Applicants must attach a letter from 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 a letter from the local planning department 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. The Department's Regional Advisor to the Director (RAD) will review the information on the form during the site review. The Environmental Review Checklist is included in the application materials.

### **Sponsor Characteristics**

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.

The Department may reject applications from previous program participants who have failed to demonstrate proficiency with the LIHTC Program or other government-sponsored housing programs. The Department 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 the Department 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.

Capacity of previous program participation includes but is not limited to the past performance of any member of the development team, claims with contractor board and other considerations as deemed appropriate at the sole discretion of the department.

### **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. The Department's project evaluation will utilize common lending standards and underwriting criteria for evaluating multi-family projects. Basic criteria includes but is not limited to:

- Primary Debt Service Ratio is recommended to be no lower than 1.15 (1.10 for projects using Rural Development loans) until initial stabilized occupancy

and no higher than 1.20 (unless accompanied and supported with an explanation.) OHCS will consider vacancy rates, ability to raise rents and historic operating cost escalations typical in the marketplace in determining debt coverage before and after initial stabilized occupancy. Repayment of must pay debt, e.g., principal amount of deferred developer fee, may increase primary debt service ratio. Projects with deferred payment loans, cash flow only loans or partnership loans will have to provide a letter from either a Tax Account or Tax Attorney stating the there is a reasonable expectation the loan can be repaid at maturity or the loan will be treated as a grant and removed from basis.

- Maximization of Loan to Value ratios and documentation thereof from the project lender.
- Construction hard costs per square foot are consistent with industry standards for similar projects unless adequately justified by community constraints or building type.
- Developer fees in accordance with Department policy (as stated in the department's application instructions).
- Reasonable operating expenses, as determined by the Department for the project size, type and population to be housed, *including*:
- Operating reserves of 4 to 6 months operating expenses (minimum). 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.
- Itemized operating expense and vacancy rate projections must be provided and supported by reasonable and credible evidence if adequate operating cost and vacancy rate data is not available.
- Acquisition price for acquisition of buildings or land shall be limited to the appraised value as determined by an independent third party licensed appraiser.
- Ability of the project to demonstrate long-term viability (minimum of a 15-year cash flow projection).
- Tax Credit pricing at current market rates.

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 normal CFC application round.

### **Architectural/Site Review**

In response to a legislative mandate for promoting good quality in the development, design and construction of publicly funded housing, the Department 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 and processes are included in the **CFC and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**

The sponsor and/or architect may request a pre-application conference with the Department before submitting all 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 department architectural approval.

### **Project Evaluation for Appropriate Credit Amount**

After projects are evaluated and ranked in order of their score, they will be presented to Department Senior Management and/or Finance Committee. Senior Management and/or Finance Committee will provide a recommendation to the Director. Non-competitive applications will be evaluated based upon the same criteria, and presented to the Department Finance Committee for recommendation to the Department Director.

Project evaluations will be conducted to determine the appropriate amount of tax credits for which the project is eligible. Pursuant to amended IRC Section 42 of the Internal Revenue Code, the amount of credit available for a project may not exceed the amount necessary for its "financial feasibility." Regulations require that allocating agencies conduct these evaluations at three specific times to determine the amount of applicable credit:

- A. Upon receipt of the **Consolidated Funding Cycle Application, or Initial 4% Credit Application;**
- B. Prior to providing a Tax Credit **Carryover Allocation** (for competitive, per capita credit requests); and
- C. No earlier than 30 days prior to issuance of **IRS Form(s) 8609.**

During each evaluation, the Department will determine the amount of credit to be reserved committed or allocated by considering the following components of each project:

1. Total project costs.
2. Funding sources available to the project:
  - a) Loans
  - b) Grants
  - c) Tax Credit Proceeds - (The Department will use current market guidelines, as well as sponsor representations, to estimate proceeds anticipated from the sale of tax credits. A copy of the Placement Memorandum or Syndication Agreement must be provided to the Department 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.

- d) When actual tax credit proceeds are determined, there may be an adjustment to the credit reserved or committed. Credit will not be increased beyond the amount originally reserved unless application amendments are submitted and the request meets the Policy on Applications by Sponsors Who Request Additional Tax Credits after Initial Award policy included in this QAP (see page 39). In the case of non-competitive credits, the request is reviewed and approved by the Department Finance Committee. If actual project costs or funding sources differ substantially from the projections submitted in the application, the Department 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, and must be approved by the Department.)
  - e) Owner Equity - (Owner equity is often in the form of deferred developer fees.) Developer fees may not exceed 15 percent of total project cost per the developer fee policy described later in this document. The Department requires full disclosure of all fees paid to parties related to the sponsor and/or developer. The developer fee shall include developer overhead, profit, and consultant fees for services normally performed by the developer.)
3. Percentage of the housing credit dollar amount used for hard costs (actual construction costs, including builder and contractor's fees).
  4. Projected operating income and expense, 15-year cash flow and tax benefits.
  5. Maximum tax credit eligibility - (Additional eligible basis will be considered for projects located in HUD's designated "Difficult to Develop Areas" and "Qualified Census Tracts," if deemed necessary for the viability of a project by the Department. An evaluation process that examines the financial feasibility and public purpose of a given project will limit the amount of tax credits allocated to a project.).
  6. Debt Service Coverage Ratio.
  7. Project reserves - (Four to six months operating reserves at a minimum. Reserves less than or in extreme excess of this will be approved on a case-by-case basis. Considerations will be made for lender and equity investor requirements.).

Project costs will be evaluated against Department criteria and industry cost standards, as well as average costs from competing projects. The Department may request substantiating documentation. Projects with excessive costs will be subject to adjustment by the Department.

When making a reservation of LIHTC the department reserves the right to decide whether a project will receive an allocation from the current year credit ceiling or an allocation from the following year's credit ceiling (forward allocation). This decision shall be based on factors including, but not limited to, the project's readiness to proceed

and the likely timing of a project's ability to satisfy the 10% of expected basis test. OHCS reserves the right to exchange a current year allocation with a future's year credit allocation if it is at risk of not allocating all of its current year credit ceiling.

### **Competitive Allocation Limitations**

During the application process, the following limitations shall apply:

- The per capita tax credit cap for projects will be the maximum of \$700,000 in annual credits or no more than two projects per sponsor (sponsor defined as Managing General Partner) per Regional Advisor to the Director region, for each CFC application round. Project sponsors, developers, or any "related entity" (An entity is a "related entity" if a relationship exists between the sponsor or developer and such entity which would result in the disallowance of losses between related persons under Sections 267 or 707(b) of the Internal Revenue Code of 1986 as amended.) utilizing Oregon's Low-Income Housing Tax Credit Program must comply with this ceiling. The \$700,000 project ceiling may be waived if sufficient applications are not received and approved to utilize the full amount of credits available. The \$700,000 maximum is waived for projects accessing 4% credits outside of the competitive process for use with tax-exempt bond financing.
- Tax Credit Offers to Reserve and/or Carryover Allocations may not be transferred without Department approval. 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. Any changes in General Partner status without the consent of the Department may result in forfeiture of the Offer to Reserve or Carryover Allocation. (Material participation is described later in this document.)
- The Department will diligently enforce all agreements, warranties and representations of the sponsor regarding the project, especially those made in the Initial Application as well as those made in the Reservation and Extended Use Agreement. Failure to perform or demonstrate progress may jeopardize the reservation for Carryover Allocation, tax credits previously awarded, and potential future allocations.
- Tax Credit Reservations are made based upon representations in sponsor 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 the Department. 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:
  1. 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 fee may be required.

2. Composition of the partnership.
  3. Lender/Equity Investor Changes.
  4. Changes in the unit mix or number of units.
  5. Changes in cost.
  6. Changes in management agent.
  7. Any others the Department in its discretion deem to be substantive changes.
- No executive, employee or agent of the Oregon Housing and Community Services Department 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.

### **Documentation Requirements for Projects Awarded Credits**

Once credits have been offered to a project, the following documentation will be required:

- Reservation or Determination letter will be sent to the applicant and an acknowledgment of the reservation by the applicant will be returned to the Department.
- Reservation and Extended Use and Hold Harmless Agreements will be executed between the Department and the applicant.
- Tax Credits fees are due and payable.
- Monthly Progress Reports will be required.
- An approved Carryover Application and Agreement for projects receiving competitive credits that will not be placed in service in the allocation year.
- An approved Final Application and executed Declaration of Land Use Restrictive Covenants will be required prior to the release of the IRS form 8609 by the Department.

### **Project Denial**

The Department reserves the right to disapprove any application for 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 the Department's enabling legislation or the project does not meet the requirements of IRC Section 42 as amended, all regulations promulgated hereunder, and/or polices and preferences stated in the Qualified Allocation Plan. The Department may impose additional conditions on project sponsors for any project as part of the credit reservation process.

### **Revocation or Reduction of Housing Credit**

The Department may revoke an offer of a credit allocation or may terminate a Reservation and Extended Use Agreement if the Department determines that:

- the proposed project owner will not obtain a construction loan or building permit, or close its equity agreement in a timely manner;

- the proposed project has not made adequate progress toward Carryover requirements;
- the proposed project will not be placed in service by the date mutually agreed upon;
- the proposed project financing is not committed as indicated;
- the applicant has submitted misleading or false information in the application to obtain funds or in other correspondence with the Department;
- the project does not fulfill the representations made in the application and no attempt to contact the Department to describe the situation has been made;
- or other just causes at the Department's discretion.

The Department may reduce the allocation amount identified in the Reservation and Extended Use Agreement prior to the issuance of the Declaration of Land Use Restrictive Covenants or Form 8609 if:

- upon analysis, the amount of credit originally assumed appropriate is in excess of the amount needed for financial feasibility,
- there has been a reduction in basis,
- the tax credit rate has changed since the original application and the rate was not locked at the Reservation and Extended Use Agreement.

The Department may revoke a reservation of credits if the Department, in its discretion believes (based on analysis), that more than 10% of the total estimated project costs will not be expended within six 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 a Carryover Allocation is made or by the dates mutually agreed upon.



## STATE & FEDERAL LIHTC POLICIES

### **Public Records Disclosure Policy**

Sponsors may request and receive a summation from the Department with respect to the evaluation of their specific project application; however, the written evaluation documents and related details of other projects will not be available. ORS 192.502(23) exempts Oregon Housing and Community Services from releasing to the public the following records, communications, and information submitted to the Department by applicants for and recipients of loans, grants and tax credits:

- personal and corporate financial statements and information, including tax returns
- credit reports
- project appraisals
- market studies and analysis
- articles of incorporation, partnership agreements and operating agreements
- commitment letters
- project pro forma statements
- project cost certifications and cost data
- audits
- project tenant correspondence requested to be confidential
- tenant files relating to certification
- housing assistance payment requests

The purpose of ORS 192.502(23) is to protect from public disclosure the detailed personal and business information that applicants and businesses must submit to the state as a condition of participating in the subsidized housing program.

### **Policy on Native American Housing Assistance and Self-Determination Act and LIHTC**

Native American Housing Assistance and Self-Determination Act funds may be combined with LIHTC and receive a 9% credit if at least 40% of the total units (not just the HOME units) in **each building** will be occupied by persons whose income is 50% or less of area median income and rented at rates affordable to persons whose income is 50% or less of area median income.

### **Policy on Use of LIHTC for Public Purpose**

The legislative history of the LIHTC program provides that residential units must be available for use by the general public. Regulations require that use by the general public be consistent with all applicable federal, state, and local law. The department reserves the right to take any action it deems appropriate if the developer, general partners (or any affiliate), management agent or any other material participant, in the department's judgment, is or has been found to be in violation of any applicable law including, but not limited to fair housing, housing accessibility or nondiscrimination laws. Material participants, but is not limited to, any entity that materially affect, in the department's opinion, the development or the operation of the property.

Departmental remedies may include, but are not limited to, rejection of the LIHTC application, termination of processing, failure to issue an IRS form 8609, or issuance of an IRS form 8823. The department may rely upon its own investigations or other information the department deems appropriate.

### **Policy on HOME/LIHTC Funding Mix**

There are several rules that apply when combining HOME funds (this applies to ANY HOME funds, not simply OHCS HOME funds) with Low-Income Housing Tax Credits. Two of the most common rules are listed below. It is recommended that you work with your tax credit attorneys to determine how these rules would specifically affect your project.

- **Including HOME funds in basis** If HOME funds are being granted to the general partner in a limited partnership and in turn then loaned to the limited partnership and in order for the HOME funds to be included in basis, one of the following must occur:
  - HOME funds must be loaned to the limited partnership at an interest rate that equals or exceeds the federal applicable rate and the loan must be able to be repaid at loan maturity. The loan can be a deferred payment loan, but the sponsor must provide a legal or accountants opinion that the loan and all accrued interest can be repaid at maturity.

OR

- HOME funds can be loaned at a rate that is less than the federal applicable rate, and remain in basis if at least 40% of the total units (not just the HOME units) **in each building** are occupied by persons whose income is 50% or less of median income and rented at rates affordable to persons whose income is 50% or less of median income.
- **130% Bonus Area** If the project is located in a hard to develop area or a designated census tract (130% bonus area), and the project is to receive both the 9% credit and the 130% bonus, then:
  - HOME funds must be loaned to the limited partnership at or above the federal applicable rate.

It is highly recommended that project sponsors wishing to combine HOME funds with LIHTC consult their tax accountant and tax attorney for guidance.

### **Policy on Material Participation by Nonprofit Organizations**

For partnerships, turnkey or joint ventures that have as a general partner or co-general partner a local tax-exempt nonprofit organization, the Department 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. Favorable consideration will be given to cases where non-profit participation in developer fees and excess cash flow is at least 25 percent. Excess cash flow will be defined here as cash flow remaining after contractual and/or partnership arrangements for cash flow sharing is taken into account.
- 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 non-profit's charitable mission and there should be an ability on the part of the non-profit to override any fiduciary duty to the owners when that duty conflicts with the charitable mission of the non-profit.
- Provision of assistance that empowers the non-profit and enables it to gain expertise.
- It is further required that the said non-profit NOT be affiliated with or controlled by a for profit organization.

Material participation of the non-profit **must** be demonstrated if the applicant is applying under the 10% non-profit set aside.

#### **Next Available Project List Policy**

On an annual basis a list will be established from projects not funded during the established competitive application process to assist the Department to fully allocate all available tax credits. The department will choose projects from the list of projects only after the extra credits are used in the following manner:

- First unallocated credits from the fall CFC round will be moved to the Spring CFC round of the credit year,
- Then credits from the credit year may be moved to projects with split year allocations,
- Then credits will be applied to projects on the waiting list in the priority listed in the department tiebreaker policy as outlined in the CFC application.

Projects will be eligible to be on the list only if:

- they were not funded in the most recently past current year's funding round
- they received a score high enough to be considered a viable project
- have not re-applied as a 4% non-competitive project and received a credit award.

The list status expires September 30 of the year for which the project sought a credit allocation (not necessarily the year of the application).

If a funded project cannot meet Carryover, or becomes ineligible for the credits for any other reason, the next available project on the list will be notified. If this project can demonstrate that it can meet Carryover requirements, the project will be awarded credits.

Other Department funding sources may also be awarded to activated wait listed projects based upon their availability.

**Policy on the Handling of Returned Credits**

Annual per capita credits returned after January 1 and prior to October 1 of any given year will be reallocated as follows:

- Projects with a forward commitment that can meet carryover requirements,
- Projects on an established waiting list that can meet carryover requirements,
- Projects solicited through a specific Request for Proposals process.

**Policy on Applications by Sponsors Who Request Additional Tax Credits after an Initial Award**

Sponsors who receive an initial reservation of annual per capita LIHTC may request additional tax credits, if the project has experienced an increase in costs and eligible basis exists to allow the credits to be issued.

Requests for additional per capita credits prior to a project receiving a carryover allocation do NOT require an application via the competitive funding round (CFC process). A project with a multiple year allocation of credits will NOT require a CFC application if a carryover allocation has NOT been issued for the latest year of credits. However these projects may NOT request an allocation of credits such that the project exceeds the \$700,000 per capita funding cap. There will be a charge based on the amount of equity generated by the increase in credits (see CFC charges to determine the amount) and this charge must accompany the increase request.

A project that has been funded with Low Income Housing Tax Credits AND has received a carryover allocation for all of the credits it was awarded must compete for an award of additional tax credits.

The Department will evaluate all requests and may or may not grant such requests depending upon the need for the additional credits, other potential funding sources available and the availability of credits for allocation by the Department. Applications for additional credits must be made prior to the building(s) being placed in service.

Any increase in the annual allocation of tax credits made after the departments offer to Reserve Tax Credits will require payment of an additional application charge and an additional reservation charge on any additional tax credits awarded.

The application for additional credits must include an explanation of the following:

- A. The process used to determine the cost estimates provided with the initial and subsequent application.
- B. Justification by line item of the differences in cost between the original and the current Uses of Financing. (A copy of the initial Sources and Uses of Financing and revised Sources and Uses must be attached.)
- C. Other measures considered or implemented to mitigate cost increases, including but not limited to:

- value engineering,
- other reductions in project specifications,
- rent increases to allow added debt service (as applicable for the population to be served),
- other sources of financing examined other than Department funds (provide documentation of denials),
- a reduction in the scale of the project and/or,
- a deferral or reduction in developer fees.

D. Contingency plans if the Department rejects the application.

The Department will amend and restate all program documents, and request an additional reservation charge, including but not limited to the Reservation and Extended Use Agreement, for all applicants who receive additional tax credits AND for sponsors who might need a reallocation of credits for technical, legal and other reasons who meet the 24-month project completion schedule and Carryover Agreements.

Projects previously awarded credits that are currently in their initial compliance periods for pre-1990 projects and in their extended use period for post-1990 projects, will not be eligible to apply for additional credits until the extended use period is over unless the additional credits will provide a clearly demonstrable benefit to the tenants. Existing LIHTC projects are not eligible to receive additional acquisition credits until the end of the initial owner's fifteen-year compliance period.

Project owners who have chronic and uncorrected non-compliance findings may not be considered eligible to apply for credits for new projects until all compliance issues are resolved or a Department approved action program has been identified and adhered thereto.

**Policy of Split Year Tax Credit Allocations**

Projects that receive split year credit allocations will have to comply with the policies and procedures in the QAP in effect in the earliest year credits are awarded. Example if a project receives an award of 2006 tax credits of \$400,000 and is awarded another \$300,000 in 2007 tax credits the entire project must comply with the QAP in effect for the 2006 Tax Credits.

**Policy on Applicable Credit Percentage Rate Lock**

Projects receiving an award of competitive credits have the following opportunities to lock the Applicable Credit Percentage Rate (Applicable Rate).

- In general the Applicable Rate is determined the month the project is placed in service. The placed in service date for a new or existing building is the date the building is ready and available for its specific function and usually the date the first unit in each building is certified as suitable for occupancy as governed by state or local law.
- Rather than use the placed in service election the owner may elect to use the Applicable Rate determined the month the owner and Oregon Housing and Community Services enter into a binding agreement to allocate the Credit to

each building. OHCS considers the fully and properly executed Reservation and Extended Use Agreement to be the binding agreement between the owner and OHCS.

- The Applicable Rate for projects receiving more than one year's allocation of credits will have the applicable rate set at the applicable rate established in the earliest binding agreement between the owner and OHCS. The Applicable Rate will be the same for each year of credit allocation.
- Owners of projects receiving an allocation of credits entirely from a different year(s) of credit ceiling than originally awarded to the project must enter into a new binding agreement IF they chose to establish the applicable rate prior to placed in service.

If the building is financed with tax-exempt bond proceeds the owner may elect to use the Applicable Rate for the month of bond issuance. The election statement must meet the requirements set forth in Internal Revenue Section Regulations Section 1.42-8.

#### **Policy on Projects That Are Not Able to Meet the Carryover Allocation Timetable for Project Completion**

Sponsors who are not able to perform according to their project schedules for any reason **after** they have received carryover allocations will be required to return tax credits previously awarded and re-compete in the application process.

An inability to utilize previous awards is a factor in the evaluation of sponsor characteristics and capacity. The Department may reject applications from previous program participants who have failed to demonstrate proficiency within the LIHTC Program or other government-sponsored housing programs. In addition, the Department may also reject or levy penalty points against an application from previous program participants who have failed to complete their projects in accordance with their applications and/or certified plans presented to the Department, or who have failed to effectively utilize previously allocated tax credits.

#### **Policy on Requirement for Progress Reports**

In the interest of utilizing Oregon's available credits fully, the Department will require each applicant for whom tax credits have been reserved to demonstrate through monthly reports that the project is making satisfactory progress towards completion. The progress reports are required to report on critical events and timelines such as site acquisition, meeting or failing to meet the 10% test, loan closings, groundbreaking, construction start, construction completion, etc. Each report must describe the applicant's actual progress in comparison to the original schedule submitted with the application, or any approved updated schedule. Progress reports should also report changes in project costs resulting from both savings and cost overruns. Progress report forms will be made available to each successful applicant of Department resources.

### **Policy on a Substantive Changes**

During the entire tax credit process (during application, during review and especially after award), sponsors must keep the Department informed regarding substantive changes to the project being considered. Sponsor proposed substantive changes in the

- financing plan,
- rent structure,
- population to be served,
- assumed or awarded reservation amount,
- credit pay-in and/or equity investor,
- development team,
- partnership composition,
- management agent,
- or other aspects the Department deems substantive, upon which the initial analysis or approval of the application was based must be submitted to the Department for consideration before being finalized. Failure to report or failure to secure Department approval of substantive changes may result in rescission or modification of the credit reservation amount or carryover allocation and may impact future considerations of LIHTC applications.

### **Subsidy Layering Review Policy**

For projects which receive, either directly or indirectly, financial assistance from U.S. Department of Agriculture Rural Development (RD) or Department of Housing and Urban Development (HUD), the Department is required to follow guidelines established by RD and HUD with respect to the review of the financial assistance provided to the project. The subsidy layering review will include a review of the amount of equity capital contributed to a project by investors, and a review of project costs including developer fees, consultant fees, contractor's profit, syndication costs and rates, etc. The Department will take any other actions required of it, as set forth in the administrative guidelines and amendments published by RD or HUD, or otherwise required by state or federal law. HUD subsidy-layering guidelines were published in the December 15, 1994 Federal Register. Subsidy layering guidelines used by the Department are available from Oregon Housing and Community Services, Housing Resources Section.

Specifically:

If there is no identity of interest (Identity of interest is a financial, familial, or business relationship that permits less than arm's length transactions. It includes but is not limited to existence of a reimbursement program or exchange of funds, common financial interests, common officers, directors or stockholders; or family relationships between officers, directors, or stockholders, between the developer and general contractor/builder), the following general contractor/builder's profit applies:

- Builder's profit up to 8% of construction costs
- Builder's overhead up to 2% of construction costs
- General requirements up to 6% of construction costs (excluding contractors liability insurance)

- Builder's profit, overhead and general requirements may not exceed 14% of total hard construction cost (less profit, overhead and general requirements).

**If there is an identity of interest**, general contractor/builder's profit may not exceed 10% of total hard construction costs. (Builder's or general contractor's profit) includes builders' profit, builders' overhead, general requirements and project management fees associated with the hard construction of the project.)

**Please Note:** The Department will evaluate the cumulative profit received by developer/General Contractor in identity of interest cases and, based on industry standards and comparable projects, may reduce profits considered excessive.

**LIHTC Residential Rental Property Test: Service Enriched Housing**

The Department is interested in working with project sponsors to create housing that fills a need in a given community. Frequently, this need is identified as service enriched housing such as Assisted Living Facilities (ALF) and other service intensive housing. As a means to ensure compliance with Section 42 of the Internal Revenue Code, all units, including ALFs and others, considered in basis for Low Income Housing Tax Credits must meet the residential rental property test as follows:

- Unit must be available to the general public. A unit will fail this test if, for instance, it is provided for use solely by members of a social organization or by an employer for its employees. LIHTC regulations adopt a general use requirement similar to the HUD housing policy governing non-discrimination. Therefore, preferences to certain classes of tenants (e.g., the homeless, disabled and/or handicapped) will not violate the general use requirement if such preference does not violate any HUD policy governing non-discrimination.
- Unit is not used on a transient basis. This test is met if the initial lease term for an LIHTC unit is a minimum of 6 months.
- Residential rental property may include any facilities that are functionally related and subordinate to the property, such as community rooms, if such spaces are available to all residents of the development free of charge.

**LIHTC and Assisted Living Facilities or other Special Use Housing**

A hospital, nursing home, sanitarium, lifecare facility, manufactured dwelling park used on a transient basis or intermediate care facility that provides significant services other than housing is generally not eligible for credit under Section 42. (Please also see Revenue Ruling 98-47.

However, if the following tests are met, the furnishing of services may not disqualify some of these properties as residential rental property:

- Services are optional. Services may be considered optional on a facts and



circumstances basis. Services are optional if:

- payment for the service is not a condition of occupying the residential unit;
- residents have the option to decline the services, or;
- residents have the right to obtain services from an alternative provider.
- Services are not optional if:
  - they are continual or frequent medical or nursing services, or;
  - they are required as a condition of tenancy and payment for services is not included in the LIHTC rent (within the LIHTC rent limits).

If services are not optional, the cost of services will be included in the LIHTC rent calculation and the unit may not qualify as a LIHTC unit and may be removed from basis.

- Charges for services that are not optional to low income tenants must be included in the gross rent calculation. In this case the combined rent and service charge cannot exceed the maximum LIHTC rent for the unit.

An exception is made for federally assisted projects for the elderly and handicapped (PLR 8921035). This exception applies to facilities authorized under 24 CFR § 278 to provide mandatory meals. To qualify for this exception, all provisions of 24 CFR § 278 must be met.

- Supplemental payments made by a state under its SSI program directly to the owner for the purpose of allowing low income elderly to live in assisted living facilities may be excluded in the determination of the tenants gross rent under Section 42 if that payment is made under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home or intermediate care facility for the mentally or physically handicapped (Treasury Regulation §1.42-11(b)(3)(ii)(A)).

### **Policy on Historic Preservation**

The Department encourages all project sponsors working with properties 50 years old or older to consult with the State Historic Preservation Office to determine the historic significance of the building. If the buildings are determined significant, the Department encourages preservation of the historic elements in the most efficient and effective manner possible. The State Historic Preservation can be reached at: State Historic Preservation Office, 725 Summer St. NE, Salem OR 97301, telephone: 503-378-4168 x231, fax: 503-378-6447.

### **Policy on Disbursement of Units**

It is the policy of the Department that all housing credit developments have affordable units disbursed throughout the development as well as throughout unit sizes. Projects will be considered unacceptable if:

- All affordable units (LIHTC eligible units) are located in one building, if a multi-building project.

- All affordable units are restricted to one unit type (i.e., number of bedrooms or square footage) in projects that have a variety of unit types.

Projects meet the Department disbursement policy if:

- LIHTC eligible units are located in all buildings of a multi building project.
- There are LIHTC eligible units available in all unit types.

Projects being built in phases should also meet the above disbursement policy for each phase of the development.

### **Policy on Property Management Units**

A full-time resident manager's unit or other supportive units in an LIHTC project may be required based on the size and/or special needs of the individual project. Some projects may utilize more than one unit, again based on the size and/or special needs of the individual project. Currently OHCS requires sponsors to designate in the restrictive covenant documents any management units that will not be included in the applicable fraction.

For buildings placed in service after September 9, 1992, the manager's unit may be considered as "common area" within a rental development. Under this interpretation, (see IRS Revenue Ruling 92-61), the unit is excluded from the low-income occupancy calculation; and the unit may be used by the manager without concern for the effective rent charged to or the income level of the manager. If this option is elected, the unit occupied by the resident manager is included in the building's eligible basis; but excluded from the applicable fraction for the purposes of determining the building's qualified basis.

To qualify as a common area the unit must support or be reserved for the benefit of all the rental units. The unit can only receive this designation if the manager or any other position utilizing a unit (i.e., maintenance) is full-time to that project. OHCS reserves the right to approve/disapprove any management units. The following criteria (not inclusive) may be considered in approving/disapproving units:

- Size of project
- Type of project (i.e., elderly, family etc.)
- Proximity of the project to property management offices
- Community resources available for maintenance/supportive services etc.

The owner must make a designation of the unit as common space or as a low-income residential unit. All developments must notify OHCS of the status of the full time resident manager's unit and any other staff units. As long as the number of previously approved management units are not increased, the owner shall be permitted to move the management units within the project as long as the change is reported on the owner's annual certification of compliance.

### **Developer Fee Policy**

The Department acknowledges the applicants' needs to include fees, which support sound development practices and develop capacity. The developer fee includes other "soft" costs that go into putting a project together (e.g. development consultant fees, project management fee, developer's overhead and profit, etc) and any developer fees chosen to be deferred. The Department has established a maximum developer fee of 15% on all projects. However, the reasonableness of fees will be evaluated based on the risk and complexity of the proposed development

Applications, which include limited or no cash development fees, may be financially infeasible. The department recognizes the need for a project's viability to take into consideration cash development fees to cover unforeseen contingencies and the project's need to meet underwriting criteria. The department realizes that circumstances, often beyond the control of the developer or sponsor, may change the amount of the cash and/or deferred developer fees. Finally project sponsors may be able to adjust deferred and/or cash development fees depending on the sponsor's ability to develop a project within budget and the anticipated development period.

The department realizes that deferred developers fees, as originally proposed, often fill a portion of a project's development cost gap. This figure often fluctuates significantly as the project progresses. If additional resources are identified that reduce the deferred developer fees the department encourages sponsors to provide additional project amenities and/or reduce project debt.

A general framework adopted by the Department to determine developer's fee reasonableness is included in the CFC Application, 4% LIHTC Application, and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.

An increase in the total developer's fees through the course of development will require the prior approval of the Department and must be justified by a change in the scope of the development. Sponsors failing to request prior approval are at risk of Department resources being recaptured.

A large difference in the amount of deferred and cash development fees represented at final application or cost certification versus original application may be considered a misrepresentation of the original project application IF the department is not provided with a reasonable explanation for the difference. The department realizes project cost changes occur during the development process the department will consider a deviation of the lesser of 25% of the original deferred fee or \$200,000 from the deferred or cash development fees represented in the original application to the department to be de minimus and thus acceptable without departmental approval. Changes in the deferred and/or cash development fees beyond the lesser of 25% or \$200,000 must be presented to the Department for approval 30 days prior to final application(s) or cost certification(s).

The calculation of developer fees as a percentage of project cost must net out the development fee from the total project cost. Specifically:

$$\frac{\text{Developer Fee}}{(\text{Total Development Cost} - \text{Developer Fee})}$$

Deferred developer's fees will not be included in computations for the reasonableness of the proposed fee. Deferred developers fee is defined by the Department as a portion of the developer fee that is being taken over a period not to exceed fifteen years and is being paid out of project cash flow. Developer fee paid from a final equity payment is not considered a deferred fee. Under no circumstances can the combined total of deferred fees and fees earned through the course of construction exceed the maximum of 15%.

**To be included in tax credit basis, deferred developer fees must be due and payable at a date certain generally within a time period that does not exceed 15 years. Cash-flow projections must support the expectation of deferred fee payment within 15 years of a project's placed-in-service date. If fees are permanently contributed to the project, they must be paid to the developer and then contributed to the project if the fees are to be included in tax credit basis.**

Developer's fees for acquisition and rehabilitation projects will be calculated for reasonableness on acquisition and all other costs. In general developer's cash fees will be limited to a maximum of 5% of the acquisition costs and fees for all other costs including rehabilitation as defined for other projects. However applicants for complex acquisitions such as expiring use projects or projects with Uniform Relocation Requirements (as required by the HOME Program) may be able to justify a higher developer fee due to the complexity of the transaction. In such instances, it is recommended that Department approval be requested and obtained prior to submission. Sponsors should contact their HCS Regional Advisor to the Director for more information.

The Department's Finance Committee will make the final determination of developer fee reasonableness and the State Housing Council in instances where tax credits is coupled with other Department grants or loans in excess of \$100,000.

### **Environmental Review Policy**

All tax credit project applicants are required to complete and submit the Department's environmental review form. This form can be found in all of the LIHTC application materials.

### **Scattered Site Policy**

The Department will entertain proposals for scattered site housing developed under Section 42 if the project includes buildings, which would, but for their lack of proximity, qualify as a project for purposes of Section

To qualify the following Federally stipulated conditions must exist:

- Project must be under common ownership,

- Project must be developed under a common plan of financing,
- 100% of the units in each building must be rent restricted.

To be considered developed under a common plan of financing, the scattered site project must be considered as a single project by all financing partners.

### **130% Rule and Community Service Facilities**

The IRS stipulates certain areas as “difficult development areas.” These areas, published in each application for LIHTC, allow a developer to request 130% of credits derived from the basis calculation. The Department will, at its sole discretion, determine the application of the 130% bonus to a project located in a designated “Difficult Development Area (DDA)”. The award of the bonus will be made based upon the amount of credits required to make the project financially feasible and will not be unreasonably withheld.

The 130% bonus is also available to projects located in HUD determined Qualified Census Tracts. The Qualified Census Tracts 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.

Eligible basis costs for new construction and rehabilitation only can qualify for this basis increase. Acquisition costs are specifically excluded by IRS code from the 130% bonus. Federal regulation permits the inclusion of a “community service facility” to serve non-residents in adjusted basis of a portion of a low-income building (not exceeding 10 percent of the eligible basis) located in a qualified census tract. Space could be used for purposes, including but not limited to, child daycare, senior programs and job training. Community service facilities are defined as facilities that are designed to primarily serve low-income households (60 percent or less of area median income.) Project employees could also use the facilities.

## COMPLIANCE POLICIES

### **Policy on property management units.**

“IRS regulations define common areas, in part as areas “reasonable required by the project”. OHCS may determine, based on the individual project and all facts and circumstances, that a manager’s unit is not “reasonably required”, if the unit subtracts from the promised low-income set-aside. This determination will be made on a case-by-case basis. OHCS does not scrutinize the activities of the manager in an no-site manager is approves. Rather, the owner of the project must ensure that the use conforms with the intent of the IRS in establishing such units.”

### **Rehabilitation Requirements/Replacement Reserve Policy**

The Department requires all applicants for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment by an approved third party unless an exception is provided by OHCS. All projects are subject to inspection, by OHCS and/or an OHCS approved third party representative(s), to make certain work has been performed to the department’s satisfaction. Architectural standards are included in the **CFC and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**

Please consult 24 CFR part 35 for additional specific information regarding lead-based paint requirements or contact OHCS LIHTC Program Representative.

### **IRS Audit Guide Policy**

The Internal Revenue Service has adopted a Final Audit Guide. The Final Audit guide is the document used by the IRS to offer the IRS examiner technical support for identifying and developing issues related to IRC Section 42. The guide consists of chapters covering specific LIHTC topics and issues that describe in some detail how the Service is examining credits issues such as basis and developer fee. From time to time, the Department will rely upon the Audit Guide for assistance in evaluating projects. Developers should be aware of the contents of the Guide. It can be found on the Internet at [www.novoco.com/audit\\_guide.htm](http://www.novoco.com/audit_guide.htm) or [www.irs.gov/bus\\_info](http://www.irs.gov/bus_info).

### **Memorandum of Understanding/IRS Form 8821 Policy**

As the Housing Credit Agency for the state of Oregon, OHCS is responsible for taking and verifying LIHTC applications from developers, as well as monitoring health and safety violations and tenant qualifications, while the IRS is responsible for administering the program nationwide. The IRS is the only agency that can revoke or adjust the amount of LIHTC allocated to a given project. The IRS through the audit process disallows credits, which were not properly used to build affordable housing. Since disallowed credits cannot be re-used, OHCS has an interest in ensuring the proper usage of credits to increase the supply of affordable housing. Although the IRS and OHCS share responsibility for the Credit program in Oregon, tax payer information cannot be disclosed to OHCS unless authorized by the taxpayer on IRS Form 8821, Tax Information Authorization (Rev. 9-98).

All applicants to the State of Oregon must provide with their applications a signed IRS Form 8821. The Form is found in the LIHTC application materials. The Form 8821 names the housing credit agency (OHCS) as the appointee to receive tax information. The IRS will provide OHCS with federal tax information relating to LIHTC, including audit findings and assessments, and enabling OHCS to make a more informed allocation of LIHTC.

The process:

- OHCS will require developers to complete Form 8821 as a condition of application for an allocation of LIHTC. The developer will name OHCS as the appointee to receive tax information. A completed Form 8821 will be forwarded to the IRS by OHCS within 60 days of receipt.
- Pursuant to Internal Revenue Code Section 6103(c) after receiving Form 8821, the IRS provides OHCS with any federal tax information pertaining to the LIHTC, including findings and assessments, for the tax periods specified on the Form. This includes a review of the Business Master File, revenue agent reports, and other sources of account data.
- OHCS will ensure that information provided by the IRS under the agreement is used solely for the purpose of awarding LIHTC and the information will be safeguarded by OHCS to prevent improper disclosure according to state and federal statutes.

### **Policy on Exceptions/Waiver Requests**

All Department policies other than those mandated by Section 42 are considered to be guidelines and all may be excepted for justifiable reasons. To be considered for an exception or waiver of applicable policies or criteria, applicants, lenders or syndicators must request the waiver or exception in writing with a full justification.

### **Mixed Use Project Policy**

The Department is interested in pursuing mixed residential/commercial developments where appropriate. As a part of the LIHTC application, the Department will require full disclosure on the financing, ownership and management of the commercial spaces in addition to all required information for the residential spaces. Sponsors must be prepared to provide detailed sources and uses statements that clearly delineate the commercial and residential costs and sources of funds.

The Department will underwrite both residential and commercial spaces in its evaluation of the project and the project's future feasibility. Release of the IRS Form 8609 will be contingent upon successful leasing of the commercial space, a guarantee of commercial space rent, or a clear demonstration that the commercial financing is in all respects separate from the residential financing.

### **Mixed Income Policy**

The Department is interested in pursuing mixed income projects where appropriate. Note that all LIHTC requirements and state policies must be met.

### **Policy on Short Term Use of Tax-Exempt Bond Financing**

As a general principle, the Department is not in favor of the use of tax-exempt financing subject to the bond cap, on a short-term basis. However, in specific situations where the use of such short term financing on a portion of the tax exempt financing can provide a demonstrated benefit that furthers affordability, the Department is willing to make an exception to this principle. In evaluating this benefit, the Department will examine the affordability of a project with and without the use of the short term financing, and will, in its sole discretion, determine if the affordability warrants the use of the tax-exempt financing. All projects proposing such a use must adhere to requirements of Section 42 as well as state requirements.

### **Acquisition/Rehabilitation Tenant Certification Policy.**

Projects that receive an allocation of credits for both acquisition and rehabilitation will not be required by the Department to complete tenant certifications for both sets of credits for the same households. Ownership may *choose* to complete a rehab certification as well.

Starting at initial lease-up, OHCS may request from owners compliance reports identifying low-income occupancy for each building in a project. The reports will reflect month-end information for each month of the first year of the credit period. The reports will identify each unit, all adult tenant names in each unit, and the income level at move-in or initial certification. Additional Information may be requested.

### **Relocation/Displacement Policy**

Permanent displacement or relocation due to Department funding is strongly discouraged. If any relocation or displacement might occur as a result of a project applicants must include the following.

- Provide a complete survey of existing tenants using the format provided by OHCS. This survey must include third party income verification and be completed and approved by the department prior to the close of project financing.
- Indicate if over crowding exists in any of the units.
- Describe the type of displacement that will occur, permanent or temporary (if temporary can the work be achieved without displacement?)
- Describe the process used to inform tenants of displacement or relocation.
- Describe the proposed relocation/displacement process. Indicate compensation and advance notice provided to those subject to displacement.
- Describe the availability of comparable units in the community.
- Indicate the source of funds for relocation expenses.
- Describe any community policies regarding tenant displacement or relocation
- Describe how tenants with disabilities will be assisted regarding relocation or displacement
- Describe how the completed units will be affordable to income qualified tenants



- Provide monthly documentation on each resident to be relocated or displaced. This information should be included in monthly project reports to OHCS.
- Copies of all notices and documentation shall be forwarded to OHCS.
- The relocation plan must be reviewed and approved by the Department
- For project receiving federal funds, the Uniform Relocation Act (URA) may apply. The URA requirements will supercede the above.

### **Compliance Monitoring Policy**

As the allocating agency for the State of Oregon, OHCS is responsible for compliance monitoring of all Low Income Housing Tax Credit projects for adherence to Section 42 as well as adherence to conditions stated in the project application. The Department is responsible for establishing compliance monitoring procedures and must report incidences of noncompliance to the Internal Revenue Service (IRS). Monitoring each project is an ongoing activity that extends throughout the Credit compliance period (a minimum of 30 years) Note: Projects that have funding sources obtained from the Department in addition to the credit will be monitored for the most restrictive requirements of the combined programs. Owners must be aware of the differences in program regulations.

The Compliance Monitoring Process is based upon the following components:

- IRC Section 42 and promulgated regulations Oregon Administrative Rules for LIHTC Programs
- Qualified Allocation Plan for projects with Building Identification Numbers (BIN) beginning with OR90
- The Compliance Manual
- Compliance Training Workshops
- Owner's Certification of Continuing Project Compliance and Project Charges
- Utility Allowance Documentation
- Use of Correct Rents and Incomes
- LIHTC Compliance Forms
- Lease and Tenant Selection Criteria Review and Approval
- Tenant File Review and Project Site Inspections
- Exemptions & Special Circumstances
- Record Keeping and Record Retention
- Noncompliance/Plans to Correct Noncompliance/Form 8823
- Monitoring Charges
- Current approved Resident Services Plan
- Uniform Physical Conditions Standards as per HUD (24 CFR 5.703)

The owner of a qualified low income tax credit project is required to comply with the following:

- **Record keeping:** The owner is required to maintain accurate records for each building in the development. These records must include:
- The total number of residential rental units in the building, including the number of bedrooms and the square footage of each residential rental unit.

- The total number of low-income units in the building.
- The total number of occupants in each low-income unit.
- The rent charged on each residential rental unit in the building, including any utility allowance.
- The low-income unit vacancies in the building.
- The rentals of the next available unit in each building and to whom rented.
- The character and use of the non-residential portion of the building that was included in the building's eligible basis. (I.e., facilities that are available on a comparable basis to all residents and for which no separate fee is charged for the use of the facilities).
- Documentation regarding the eligible and qualified basis of each building as of the end of the first year of the tax credit period.
- Income certification for each low-income household.
- Documentation supporting each household's income certification (third-party verifications, asset certification, etc).
- The original local health, safety or building code violation reports or notices that were issued by the State or local governmental unit.
- Documentation that all units are available to the general public.
- **Record Retention:** Owners are required to keep all records for each building for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. However, the records for the first year of the credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.
- **Certification:** The owner must certify the following, under penalty of perjury, at least annually through the end of the compliance period:
  - The project meets the requirements of the 20/50, 40/60 or other elected set-aside test.
  - There was no change in the applicable fraction, as defined in IRC Section 42(c)(1), of any building, or, if so, a description of the change.
  - The owner has received an annual resident certification form from each low-income household and documentation to support that certification.
  - Each low-income unit in the project is rent restricted.
  - Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project. Additionally, all low income units have been continually occupied, vacant but rent ready, or vacant for redecorating and/or minor repairs for a period of less than 30 days, throughout the reporting period
- There has been no change in eligible basis, as defined in IRC Section 42(d), of any building, or, if so, the nature of the change.

- All resident facilities included in the eligible basis of any building are provided on a comparable basis without a separate fee to all residents of the project.
- Resident services are being provided as described in the application for credits, or suitable alternative resident services are being provided.
- If a low-income unit becomes vacant during the year, reasonable attempts are made by the owner to rent it to a resident with a qualifying income and while it is vacant, no units of comparable size or smaller are rented to residents not having a qualifying income.
- If any low-income household's income increases above the limit (140% of the area median income adjusted for family size), the next available unit of comparable size or smaller will be rented to households having a qualified income.
- **No tenants have been evicted for other than good cause.**
- A Declaration of Land Use Restrictive Covenants is in effect for all projects.

### **Annual Owner Certification On-Line Reporting**

Beginning in 2007 (for the reporting year of 2006), the Owner Certification of Continuing Compliance and all related reporting attachments will be accepted only through the Department's compliance website. The on-line reporting system will be in place, and password protected, by January 1, 2007.

- Monitoring of a project will occur as follows:
- An on-site inspection of all buildings in a project will occur by the end of the second year following the date the last building is placed in service. This review will include a physical inspection and a review of the low-income certification and documents supporting the certification for 20% of the tenants,
- Subsequently, at least once every three years, the Department will conduct an on-site inspection of each building exterior and all common areas in a project and will review tenant files and complete a physical inspection of at least 20% of the project's low-income units.
- When a project is scheduled for review, the Department will:
- Perform the on-site file, property and unit inspections;
- Inform the owner as soon as possible of any finding of noncompliance with regard to such review.
- **Liability:** Compliance with the requirements of Section 42 and state regulation is the responsibility of the owner. The Department is not liable for an owner's non-compliance.
- **Correction of Non-Compliance Conditions:** The Department will provide written notice of non-compliance to the owner if:
- Annual Certification Report with attachments is not received by the due date.
- The project is found to be out of compliance, through inspection, review or other means, with the provisions of Section 42 or state regulations. The owner will have 45 days from the date of notice to supply any missing

information for the Annual Certification Report. The owner will have 45 days from the date of notice to correct any non-compliance issues. The Department may grant an extension of up to 90 days if good cause is demonstrated as determined by the Department. At the end of the allowable correction period, the Department is required to file Internal Revenue Service Form 8823, "Low Income Housing Credit Agencies Report of Noncompliance," with the IRS. All non-compliance issues must be reported whether corrected or not. The Department will explain the nature of the non-compliance or failure to certify and state whether the non-compliance has been corrected. The IRS will make any determinations as to the applicability of recapture penalties, not the Department.

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**Compliance Status Tracking:**

One intent of the monitoring policy is to track owner non-compliance with Section 42 and OHCS requirements, for use by the Department, at its discretion. Issues that will be tracked, and information compiled on include, but are not limited to, the following items:

- Any 8823 events as a result of monitoring;
- Owner compliance with Department-required reporting deadlines
- Performance of management agents employed by the owner
  
- **Compliance Monitoring Charges:** The IRS requires inspection of projects every three years. Monitoring charges are \$35.00 per unit per year and will apply to all LIHTC projects regardless of the placed in service date.
- **Participatory Requirements:** Oregon Housing & Community Services requires that all projects comply with the participatory requirements as described in the Consolidated Funding Cycle, 4% LIHTC application(s) and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.

As provided in the IRS compliance monitoring regulations, the Department has a right to review tenant files on-site and/or to perform physical inspections of LIHTC Projects as deemed necessary throughout the term of affordability

**Non-Compliance Requiring Additional OHCS Staff Time:**

The scope of non-compliance detected during any monitoring activity will be evaluated by the Department. At its discretion, the Department will expand the audit sampling for additional review. This expansion could extend to 100% of the units and/or files deemed to have noncompliance issues. The Department reserves the right to require the ownership entity to hire a third-party auditor acceptable to the Department, at owner expense, to complete all or part of any additional monitoring and assessment of correction status for excessive non-compliance.

Other items that may be requested by the Department as a means to track project health include, but are not limited to:

- Audited annual financial statements for each project

- Annual project operating statements showing actual income and expenses as they relate to the real property
- Documentation that all state requirements are being met.
- The Department will review all changes in Management Agent. Department policy requires 60 days prior to any change. The owner must submit the proposed new agent plan and qualifications to HPM. HPM will review the materials and approve or disapprove the proposed agent. Any exceptions to this policy will be made at the discretion of the Department.

### **Housing Credit Properties After Year 15**

The federal low-income housing tax credit (“Housing Credit”) was created by Congress in 1986 and is administered in Oregon by Oregon Housing & Community Services (OHCS).

Properties that were awarded Housing Credits on or after January 1, 1990 must comply with restrictions as embodied in the recorded Reservation and Extended Use Agreement (EUA) and the Declaration of Land Use and Restrictive Covenants (Declaration). After the initial 15-year Low-Income Housing Tax Credit (LIHTC) Compliance Period has expired for these allocations, the Internal Revenue Service (IRS) no longer receives notification of noncompliance. Consequently, the onus for dealing with noncompliance during the remainder of the affordability period rests with the state-allocating agency (see attached Exhibit “H”).

OHCS has determined during the Extended Use Period the administrative burden to owners can be reduced by relaxing some of the inspection, audit, reporting, and eligibility criteria, providing a more palatable way to operate tax credit properties and maintain compliance during the Extended Use Period when the tax benefits have been exhausted. Monitoring for compliance during the Extended Use Period will ensure the spirit of the program is preserved, the housing will continue to serve the people for whom it was intended, and the OHCS mission continues to be met.

### **Definitions**

Compliance Period: with respect to any building, the period of 15 taxable years, beginning with the first taxable year of the credit period. The first year of the Compliance Period is the first year in which the owner claimed credits. The first year must be either the year the building is placed in service or, at the owner’s election, the year following the placed in service year. All requirements of the Internal Revenue Code, Section 42, including the 1.42-5 monitoring regulations are in effect during the 15-year Compliance Period.

Extended Use Period: the period beginning on the last day in the Compliance Period in which such building is part of a qualified low-income housing project and ending on the date specified by OHCS in the EUA.

### Post Year 15 Compliance:

Post 15-year compliance rules will be greatly simplified. The owner agrees to:

- maintain the applicable fraction by leasing units to households whose income at placement is 50% or 60% or less of the area median gross income, as adjusted for family size;
- maintain the rent and income limit restrictions in accordance with the current Reservation and Extended Use Agreement;
- lease, rent, or make available to the general public all units subject to the credit;
- comply fully with the requirements of the Fair Housing Act;
- not refuse to lease a unit to a Section 8 voucher holder solely because of the prospective tenant's status as a voucher holder;
- maintain all units as suitable for occupancy;
- certify tenants initially and on the anniversary of the move-in (for units subject to income qualification requirements);
- continue to update utility allowances annually. Revised utility allowances must be implemented within 90 days of their published effective date; and
- comply with other restrictions as required under the specific year's Qualified Allocation Plan (QAP) or representations made during the application process.

Revised tenant eligibility issues:

Tenant Income Certifications:

- Move-in certification: The initial income certification is still required. Income will be verified by third-party sources and calculated in a manner consistent with the determination of income as defined under Section 8 requirements.
- Annual certifications: The Tenant Income Certification will still be required at each annual recertification. However, third-party verification of income will only be required at the first annual certification (in addition to the initial certification). Thereafter, verification of all income sources can be accomplished through self-certification from the tenant(s).
- Changes in household composition: Any household composition change (not including birth or death) in the first six months of occupancy will require a new initial certification, and third-party verification to determine eligibility.

Student Status:

Student status rules will no longer be applicable.

Unit Transfers:

Unit transfers anywhere within a project (building to building) are allowed regardless of the household's income at the point of transfer.

Next Available Unit Rule:

Projects will not be subject to the Next Available Unit Rule but will be required to maintain the unit set-aside agreed upon in the EUA.

Post 15 Year Compliance Monitoring:

The following is the revised monitoring procedure OHCS will follow during the Extended Use Period:

Inspections:

OHCS will continue to inspect and audit projects but at reduced frequency. Projects will be inspected and audited a minimum of every five years. Inspections and audits may be more frequent at the discretion of the assigned Compliance Officer. Depending on the size of the project and other factors, the number of units and files inspected will range from 5 – 10% each, or a minimum of 5 units and files. More units and files (over the 10%) may be inspected at the Compliance Officer's discretion.

Annual Reporting:

An Annual Owner's Certification of Continuing Program Compliance will be required. However, much of the language will be revised to reflect the end of the Credit Period and the shift in focus to the compliance under the provisions of the Declaration.

The Annual Summary Spreadsheet will also be required. However, this form will be revised to remove components no longer necessary during the Extended Use Period. remove components no longer necessary during the Extended Use Period.

Monitoring Charges:

Monitoring charges will be reduced from \$35 per unit per year to \$25 per unit per year. Invoices will continue to be sent to the Owner and Managing Agent of record at the end of the calendar year with a due date the following January.

OHCS reserves the right to adjust the monitoring charges due to changing circumstances.

Project-Based Subsidy Programs:

Inspections and monitoring charges will be waived for projects with project-based subsidy programs in effect. Ownership must notify OHCS of the type and duration of the subsidy program(s) for a written waiver of these requirements. Inspections and charges will resume if the subsidy program expires prior to the expiration of the terms of the Extended Use Agreement.

Transfer of Ownership or Ownership Interest:

A transfer agreement is required in the event of a transfer of ownership or ownership interest. Such agreement will put the new owner or partner on notice that it is subject to the terms of the Declaration and EUA, including all compliance restrictions and annual compliance monitoring.

Consequences of Noncompliance:

Owners will be given the same timeline for correction of noncompliance as during the initial Compliance Period (45 days from the date of the inspection and audit report). Extensions are available by request but, in no case, can exceed a total of six months

(including the initial 45 day correction period). Uncorrected noncompliance may result in the following progressive actions:

The status of owners, managing agents, and/or general partners will be designated as “not in good standing” with the agency. OHCS reserves the right to publish a list of “not in good standing” entities on our website in the future if deemed necessary. OHCS may choose to enforce the Declaration and Extended Use Agreement through the courts.

## **DISCLAIMER**

**Issuance of a Tax Credit Reservation, Tax Credit Carryover Allocation or Placed-In-Service Allocation (IRS Form 8609) by the Department shall not constitute or be construed as a representation or warranty as to the feasibility or viability of the project, or the project's ongoing capacity for success, or any conclusions with respect to any matter of federal or state income tax law. All tax credit allocations are subject to the Internal Revenue Service regulations governing the tax credit program, and applicants are responsible for the determination of their project's eligibility and compliance. If statements in this QAP are in conflict with the regulations set forth in Section 42 of the IRC or its amendments, the regulations shall take precedence. Applicants should not rely solely upon this guide or the Allocating Agency's interpretations of the IRC requirements relating to the tax credit.**



**EXHIBIT A**

**PRELIMINARY ARCHITECT and "AS BUILT" CERTIFICATIONS**

Preliminary Certification

I have examined the drawings and specifications dated \_\_\_\_\_ prepared by \_\_\_\_\_ (architect) and related to the development known as \_\_\_\_\_ (project name) located in \_\_\_\_\_ (city, state).

Based upon this examination, to the best of my knowledge and belief, these documents conform to all local, state and federal laws designated as the development standard for the project including, but not limited to, the Fair Housing Laws as they pertain to disabled accessibility and adaptability, all local health, safety and building codes and those requirements related to design or construction of the project as set forth in the Department's Low-Income Housing Tax Credit Allocation Plan.

\_\_\_\_\_  
Architect

Owner

Date: \_\_\_\_\_

Date:

**"As-Built" Certification**

I have inspected the development known as \_\_\_\_\_ (project name) located in \_\_\_\_\_ (city, state) and hereby certify that the development has been built in accordance with the drawings and specifications dated \_\_\_\_\_ and prepared by \_\_\_\_\_.

Based upon this inspection, to the best of my knowledge and belief, the development has been constructed in conformance with all local, state and federal laws designated as the development standard for the project including, but not limited to, the Fair Housing Laws as they pertain to disabled accessibility and adaptability, all local health, safety and building codes and those requirements related to design or construction of the project as set forth in the Department's Low-Income Housing Tax Credit Allocation Plan.

\_\_\_\_\_  
Architect

Owner

Date: \_\_\_\_\_

Date:

## EXHIBIT B

### OREGON AFFORDABLE HOUSING POLICY STATEMENT

#### Oregon State Housing Council

WHEREAS, pursuant to ORS 456.555(6)(a), the State Housing Council (the "Council") shall, with the advice of the Director of the Housing and Community Services Department (the "Director"), set policy and approve or disapprove rules and standards for housing programs of the Housing and Community Services Department (the "Department"); and,

WHEREAS, pursuant to ORS 456.571(1), the Council shall develop policies to aid in stimulating and increasing the supply of housing for persons and families of lower income; and,

WHEREAS, pursuant to ORS 456.571 (2)(a), the Council must review each single-family home ownership loan in excess of \$150,000 and all other housing loans or grants in excess of \$100,000 which are proposed to be made by the Director for approval or disapproval; and,

WHEREAS, pursuant to ORS 458.620(3), as amended by 1995 Oregon Law, Section 1, Chapter 174, the Council shall establish a policy for distributing funds of the Home Ownership Assistance Account, in accordance with said statute, to assist persons of low and very low income, as defined in ORS 458.610, until December 31, 2002, at which time said statute is repealed; and,

WHEREAS, pursuant to ORS 458.620(3) and ORS 458.650, the Council shall establish a policy for distributing funds of the Housing Development and Guarantee Account and the Emergency Housing Account, in accordance with said statutes, to assist persons of low and very low income, as defined in ORS 458.610; and,

WHEREAS, the Council recognizes the need to develop affordable housing policy which provides a comprehensive plan for the success of a proposed housing project as well as to the individuals or families who occupy said project; and,

WHEREAS, the Council has adopted the following mission statement: "The Oregon State Housing Council shall promote a positive quality of life for Oregonians through the development of high quality affordable housing."

NOW THEREFORE, the State Housing Council adopts the following policy:

All things within the scope of the Council's statutory authority and projects submitted to the State Housing Council for approval, shall be reviewed in light of, but not limited to, the following areas; i) Financing and Need; ii) Integrated and Quality Development; iii) Property Management; iv) Long Term Program/Services Scope and Management; v) Capacity Building; and vi) Council adopted plans and policies that target state and federal resources in support of moderate and low income Oregonians.

The State Housing Council, with the advice and assistance of the Director, will design specific criteria for project approval, in accordance with the above referenced statutes. The criteria will be reviewed on an annual basis by the State Housing Council at the Council's Fall retreat, or as otherwise designated by the chair of the Council.

## **OREGON AFFORDABLE HOUSING POLICY CRITERIA**

In concert with its mission and statutory authority to set housing policy for the State of Oregon (ORS 456.555 (6) (a), and to protect the public interest in affordable housing development and related programs, the Oregon State Housing Council supports initiates and approved funds for proposals that address the following criteria:

**i. FINANCING AND NEED**

*Assure the long-term viability of projects through accurately determining the need and doing a present value economic analysis versus the cost of dollars.*

**ii. INTEGRATED AND QUALITY DEVELOPMENT**

*Assure a thorough and multidimensional review of site specific planning considerations and encourage the integration of incomes and densities in communities, neighborhoods, or geographic locations. Proposals to create affordable housing shall demonstrate how they contribute to positive community climates with adopted comprehensive plans.*

**iii. PROPERTY MANAGEMENT**

*Assure the maintenance of properties in a decent, safe, sanitary condition that assures long-term stewardship of the property.*

**iv. LONG TERM PROGRAM/SERVICES SCOPE AND MANAGEMENT**

*Assure the ongoing viability and implementation of an appropriate resident service program.*

**v. CAPACITY BUILDING**

*Utilize and foster the further development of capacities in the community for the development and maintenance of affordable housing options.*

**vi. COUNCIL ADOPTED PLANS AND POLICIES THAT TARGET STATE AND FEDERAL RESOURCES IN SUPPORT OF MODERATE AND LOW INCOME OREGONIANS**

*Assure private, local, state and federal resources are applied in an integrated, collaborative, community supported and coordinated manner.*



# EXHIBIT C

## FORM 8821

Form **8821**  
 (Rev. September 1998)  
 Department of the Treasury  
 Internal Revenue Service

### Tax Information Authorization

▶ **IF THIS AUTHORIZATION IS NOT SIGNED AND DATED, IT WILL BE RETURNED.**

OMB No. 1545-1165  
**For IRS Use Only**  
 Received by:  
 Name \_\_\_\_\_  
 Telephone (\_\_\_\_\_) \_\_\_\_\_  
 Function \_\_\_\_\_  
 Date \_\_\_\_/\_\_\_\_/\_\_\_\_

**1 Taxpayer information.**

Taxpayer name(s) and address (please type or print)	Social security number(s) _____ _____ _____ _____ _____ _____	Employer identification number _____ _____ _____ _____ _____ _____
	Daytime telephone number (_____) _____	Plan number (If applicable)

**2 Appointee.**

Name and address (please type or print)  OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT 1600 STATE STREET SALEM OREGON 97301-4246	CAF No. _____ Telephone No. (_____) _____ Fax No. (_____) _____ Check if new:      Address <input checked="" type="checkbox"/> Telephone No. <input checked="" type="checkbox"/>
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**3 Tax matters.** The appointee is authorized to inspect and/or receive confidential tax information in any office of the IRS for the tax matters listed on this line. \*Instructions for column (d): Any related federal tax information pertaining to low-income housing credits, including audits findings and assessments.

(a) Type of Tax (Income, Employment, Excise, etc)	(b) Tax Form Number (1040, 941, 720, etc.)	(c) Year(s) of Period(s)	(d) Specific Tax Matters (see instr.*)
<b>Income</b>		<b>1996 to 2003</b>	<b>Any related federal tax information pertaining to low income housing credits, including audits, findings, and assessments.</b>

**4 Specific use not recorded on Centralized Authorization File (CAF).** If the tax information authorization is for a specific use not recorded on CAF, check this box. (See the instructions on page 2.) .....   
 If you checked this box, skip lines 5 and 6.

**5 Disclosure of tax information** (you **must** check box 5a or b unless box 4 is checked):  
 a If you want copies of tax information, notices, and other written communications sent to the appointee on an outgoing basis, check this box .....   
 b If you do not want any copies of notices or communications sent to your appointee, check this box .....

**6 Retention/revocation of tax information authorizations.** This tax information authorization automatically revokes all prior authorizations for the same tax matters you listed above on line 3 unless you checked the box on line 4. If you do not want to revoke a prior tax information authorization, you **MUST** attach a copy of any authorizations you want to remain in effect **AND** check this box .....   
 To revoke this tax information authorization, see the instructions on page 2.

**7 Signature of taxpayer(s).** If a tax matter applies to a joint return, **either** husband or wife must sign. If signed by a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute this form with respect to the tax matters/periods covered.

Signature	Date	Signature	Date
Print Name	Title (if applicable)	Print Name	Title (if applicable)

### **General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Change To Note.** New column (d) is added to line 3 for specific tax matters. Use column (d) to specify tax information that is to be provided by the IRS. See the line 3 instructions on page 2.

**Purpose of form.** Form 8821 authorizes any individual, corporation, firm, organization, or partnership you designate to inspect and/or receive confidential information in any office of the IRS for the type of tax and the years or periods you list on this form.

Form 8821 does not authorize you appointee to advocate you position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. If you want to authorize an individual to represent you, use **Form 2848**, Power of Attorney and Declaration of Representative, instead of Form 8821. You may file your own tax information authorization without using Form 8821, but it must include all the information that is requested on the form.

**Taxpayer identification numbers (TINs).** TINs are used to identify taxpayer information with corresponding tax returns. It is important that you furnish correct names, social security numbers (SSNs), individual taxpayer identification numbers (ITINs), or employer identification numbers (EINs) so that the IRS can respond to your request.

**Fiduciaries.** A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer. Therefore, a fiduciary does not act as an appointee and should not file Form 8821. File **Form 56**, Notice Concerning Fiduciary Relationship, to notify the IRS of the existence of a fiduciary relationship. If a fiduciary wishes to authorize an appointee to inspect and/or receive confidential tax information on behalf of the fiduciary. Form 8821 must be filled and signed by the fiduciary acting in the position of the taxpayer.

**Partnership items.** Sections 6221-6231 authorize a Tax Matters Partner to perform certain acts on behalf of an affected partnership. Rules governing the use of Form 8821 do not replace any provisions of the above-referenced sections.

**Filing the tax information authorization.** File the original, photocopy, or facsimile transmission (fax) of Form 8821 with each IRS office in which you want your appointee to inspect and/or receive confidential tax information on your behalf. If Form 8821 is filed for a matter currently pending before an office of the IRS, such as an examination, file the authorization with that office. Otherwise, file the authorization with the service center where the related return was, or will be, filed. See the instructions for the related tax return for the service center addresses. Form 8821 must be received by the IRS within 60 days of the date it was signed and dated by the taxpayer.

### **Specific Instructions**

#### **Line 1—Taxpayer information**

**Individuals.** Enter your name, TIN, and street address in the space provided. If a joint return is used, also enter your spouse's name and TIN. Also enter your EIN if applicable.

**Corporations, partnerships, or associations.** Enter the name, EIN, and business address.

**Employee plan.** Enter the plan name, EIN of the plan sponsor, three-digit plan number, and business address of the plan sponsor.

**Trust.** Enter the name, title, and address of the trustee, and the name and EIN of the trust.

**Estate.** Enter the name, title, and address of the decedent's executor/personal representative, and the name and identification number of the estate. The identification number for an estate includes both the EIN, if the estate has one, and the decedent's TIN.

**Line 2—Appointee.** Enter the name of your appointee. Use the identical name on all submissions. If you wish to name more than one appointee, indicate so on this line and attach a list to the form.

**Note:** Only the first three appointees you list will be input on the CAF.

Enter the nine-digit CAF number for each appointee. If an appointee has a CAF number for any previously filed Form 8821 or power of attorney (Form 2848), use that number. If a CAF number has not been assigned, enter "NONE", and the IRS will issue one directly to your appointee.

The CAF number is a number that the IRS assigns to appointees. The appointee must use the CAF number on all future Forms 8821 or 2848. The IRS does not assign CAF numbers to requests for employee plans and exempt organizations.

**Line 3—Tax matter(s).** Enter the type of tax, the tax form number, the years or periods, and the specific tax matter. Enter "Not applicable", in any of the columns that do not apply.

In **column (c)**, write the years using the YYYY format, for example, "1998". **Do not** use general references such as "all years", or "all periods". If you do, your application will be returned.

You may list any prior years or periods, but for future periods, you are limited to the 3 future periods that end no later than 3 years after the date Form 8821 is received by the IRS. For **employment tax** or **excise tax** returns, enter the applicable quarters of the tax year. For **excise tax** returns, enter the date of the taxpayer's death instead of the year or period.

In **column (d)**, enter any specific information you want the IRS to provide. Examples of column (d) information are: transcript of an account, a balance due amount, a specific tax schedule, or a tax liability.

For requests regarding a **foreign certification** shown on **Form 6166**, Certification of Filing A Tax Return, enter "Form 6166" in column (d) and check the box on line 4.

**Line 4—Specific use not recorded on CAF.** Generally, the IRS records all tax information authorizations on the CAF system. However, authorizations relating to specific issue are not recorded.

Check the box on line 4 if Form 8821 is filed for any of the following reasons: (1) requests to disclose information to loan companies or educational institutions, (2) requests to disclose information to Federal or state agency investigators for background checks, (3) civil penalty issues, (4) trust fund recovery penalty, (5) application for EIN, and (6) claims filed on **Form 843**, Claim for Refund and Request for Abatement. If you check the box on line 4, you appointee should submit a copy of Form 8821 with each written request to receive information by mail or bring a copy of Form 8821 to each

appointment to inspect or receive information. A specific use tax information authorization does not automatically revoke any prior tax information authorizations.

**Line 6—Retention/revocation of tax authorizations.**

Check the box on this line and attach a copy of the tax information authorization you do not want to revoke.

To revoke an existing authorization, send a copy of the previously executed Form 8821 to each IRS office where it was filed. Write "REVOKE" across the top of the form and sign your name again under the existing signature (line 7). If you do not have a copy of the prior Form 8821, send a letter to each IRS office where you filed it. The letter must indicate that the authority of the tax information authorization is revoked and must be signed by the taxpayer. Include the name and address of each appointee whose authority is revoked.

**Note:** *Filing Form 8821 does not revoke any Form 2848 that is in effect.*

**Line 7—Signature of taxpayer(s).**

**Individuals.** You must sign and date the authorization. **Either** husband or wife must sign if Form 8821 applies to a joint return.

**Corporations.** Generally, Form 8821 can be signed by: (1) an officer having legal authority to bind the corporation, (2) any person designated by the board of directors or other governing body, (3) any officer or employee on written request by any principal officer and attested to by the secretary or other officer, and (4) any other person authorized to access information under section 6103(e).

**Partnerships.** Generally, Form 8821 can be signed by any person who was a member of the partnership during any part of the tax period covered by Form 8821. See **Partnership items** above.

**Other.** See section 6103(e) if the taxpayer has died, is insolvent, is a dissolved corporation, or if a trustee, guardian, executor, receiver, or administrator is acting for the taxpayer.

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**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Form 8821 is provided by the IRS for your convenience and its use is voluntary. If you designate an appointee to inspect and/or receive confidential tax information, you are required by section 6103(c) to provide the information requested on the form. Under section 6109, you must disclose your social security number (SSN), employer identification number (EIN), or individual taxpayer identification number (TIN).

Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. We may also give this information to other countries pursuant to tax treaties.

You are not required to provide the information requested on a form unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Disclosure of the information of this form may be made as provided in section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Recordkeeping, 7 min.; Learning about the law or the form, 12 min.; Preparing the form, 24 min.; Copying, assembling, and sending the form to the IRS, 20 min.**

If you have comments concerning the accuracy of these time estimates, or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send Form 8821 to this address. Instead, see **Filing the tax information authorization** on this page.

## **EXHIBIT D**

### **RD MOU**

#### **MEMORANDUM OF UNDERSTANDING**

Between the  
Oregon Housing and Community Services Department  
and  
**Oregon USDA Rural Development Rural Housing Services**

#### **INTRODUCTION**

The Rural Housing Service of Rural Development, Oregon, an Agency of the U.S. Department of Agriculture, hereinafter referred to as “RHS”, and the State of Oregon Housing and Community Services, hereinafter referred to as “OHCS”, wish to enter into the following Memorandum of Understanding (MOU) regarding 1) the general sharing of housing development information, 2) architectural requirements for joint funded RHS and OHCS developments, 3) the sources and uses of funds in projects receiving RHS funding and low income housing tax credits, 4) the monitoring of low income housing tax credit compliance in RHS funded projects, and 5) the availability of low income housing tax credits for proposed RHS funded projects.

RHS administers loan and grant programs authorized by Sections 514, 515, 516, 533, and 538 of the Housing Act of 1949, which provides financing for housing for very low and low income tenants in rural areas. The Section 515, 514/516, and 538 programs are administered at the State Office level and complies with all applicable Civil Rights and Fair Housing laws. The Internal Revenue Service (IRS), through Section 42 of the Internal Revenue Code, provides tax credits which are administered through the OHCS to encourage developers to provide affordable housing and participate in programs such as Section 515, 514/516 and 538.

#### **BACKGROUND**

The IRS published regulations on September 2, 1992 to guide State agencies in monitoring compliance with the low-income housing tax credit requirements by owners of affordable housing properties. These regulations allow the State agency to implement review requirements that allow exceptions to the requirements to review tenant certifications, supporting documentation, and rent records of such properties to owners of RHS financed properties. However, for OHCS to grant review exceptions on RHS financed properties, OHCS must enter into an agreement identified as a Memorandum of Understanding (MOU) with RHS whereby RHS will agree to provide OHCS with information concerning the income and rent of the tenants in the project. OHCS may assume accuracy of the information provided by RHS without verification. The original OHCS-RHS MOU signed 5-17-1993, and extended on 6-17-1994, expired on May 17,



1995. This year 2000 MOU reinstates the original MOU provisions and identifies additional considerations related to the exchange of project information and reservation of tax credits for RHS financed projects.

### **SCOPE OF AGREEMENT**

Under this agreement, the RHS, through the Oregon State Office of USDA Rural Development, and OHCS agree to engage in cooperative efforts to 1) identify housing development activity which is mutually supportive of agency missions or is in conflict with similar housing, 2) enable RHS to assure that only the necessary financing is provided through the section 515, 514/516 and 538 programs, 3) enable OHCS to fully evaluate the tax credit project request of RHS funding applicants, including architectural requirements of OHCS, 4) enable OHCS to effectively monitor compliance of RHS borrowers who have tax credit requirements, as provided in Section 42 of the IRS Code, and 5) assure a minimum amount of low income housing tax credits are available to qualified RHS funded projects.

### **PURPOSE**

The purpose of this document is to establish the general conditions under which RHS and OHCS agree to cooperate, exchange information, and provide mutually beneficial project support.

### **BOTH PARTIES AGREE**

#### **GENERAL INFORMATION**

1. The general information shared under this MOU is for internal analysis and will not be disclosed to other than the appropriate RHS and OHCS employees. Specific information regarding individual proposals may be shared with the applicant/sponsor and other providers of funds for respective projects as appropriate and authorized by the proposal sponsor.
2. RHS and OHCS will inform any applicants seeking both low income housing tax credits and RHS loan assistance that the MOU will be applied to the processing of their applications with OHCS and RHS.
3. RHS will participate in public meetings/hearings each year as held by OHCS to assist in the development of the Housing Credit Allocation Plan. OHCS will accept within the limitations of the public solicitation for Allocation Plan comments, RHS material presented in efforts to retain the USDA Rural Development set-aside of credits.
4. RHS will inform OHCS each fiscal year of the amount of program funds allocated to Oregon or available as part of any Notice of Funding Availability (NOFA) issued by RHS National Office. A copy of the NOFA published in the Federal Register will be provided OHCS upon request.

5. RHS will provide OHCS information concerning any 533 Housing Preservation Grant (HPG) funds awarded in Oregon for rehabilitation of a multi-family project or single-family rehabilitation program.
6. In order to avoid duplicative or competitive local housing development, after selection of Sections 514, 515, 516, 533, or 538 loan requests for further processing, RHS will forward basic project information to OHCS for review and comment. OHCS will similarly forward a list of project funding considerations for RHS review and comment.

**PROJECT SPECIFIC INFORMATION**

7. Information will be shared on estimated and/or actual project costs for properties financed by RHS that are anticipated to receive low-income housing tax credits. RHS agrees to provide OHCS the following information/forms, as applicable, for projects being considered for or receiving RHS program(s) funding:
  - a. Current processing list of pre-applications and applications updated at least semi-annually.
  - b. Copy of any AD-622, “Notice of Pre-application Review Action” issued to the applicant requesting a complete application.
  - c. Copy of Form SF 424, “Application for Federal Assistance”; Form FmHA 1930-7 “MFH Project Budget”; Form FmHA 1924-13 “Estimate and Certificate of Actual Cost”; legal description; market value determined by appraisal.
  - d. Copy of Form FmHa 1944-51 MFH Obligations – Fund Analysis for each loan approved and obligated.
  - e. Copy of Form FmHA 1944-7 MFH Interest Credit Agreement indicating the borrower’s 1% monthly loan payment.
  - f. Copy of Form FmHA 1924-13 “Estimate and Certificate of Actual Cost” indicating actual costs when construction is complete, including any cost analysis performed.
8. The following fee limitations will be adhered to:
  - a. builder’s profit: up to 6% (as per QAP) of the construction cost as established by contract(s);
  - b. general overhead: up to 2% (as per QAP) of the construction cost as established by contract(s);
  - c. general requirements: up to 6% (as per QAP) of the construction cost as established by contract(s);
  - d. developer’s fee: up to 15% of the total development costs for tax credit purposes for new construction and rehabilitation costs; up to 5% of the acquisition cost for acquisition/rehab projects.  
(See attachment 1, Developer Fee Schedule.)

Rural Development staff and OHCS staff will review, at least annually, the fee norms on builder or general contractor charges (builder’s profit, builder’s overhead, and general requirements) established by this MOU. The developer’s fee or any other

fees allowed will also be reviewed. Any revised fee norms will be added as an amendment to this agreement and be used in subsequent analysis of loan or credit requests.

9. The above fee norms will be used in the OHCS analysis of the amount of assistance that is necessary for a proposed project. In all cases where the results of an analysis indicate that there will be excess assistance (defined as more than the lesser of \$25,000 or 1 percent of the total development cost as authorized by OHCS), RHS will consult with the applicant and OHCS to strive to reach an agreement for reducing the excess assistance. The following are examples of actions that can be taken:
  - a. reducing the amount of tax credit units requested, or
  - b. reducing the level of assistance provided by one or more of the funding sources, or
  - c. revising the uses to include eligible costs for any funding participants, provided the project enhancement is consistent with the intent of the RRH program and will assist the resident population being served by the housing.

Parties to this agreement understand that in the event that excess assistance is not reduced through other means, RHS will adjust the amount of equity contribution (through the reduction of the loan) to ensure that RHS assistance provided is not more than is necessary to provide affordable housing, after taking account of assistance from all Federal, State, and local sources. Any reduction pursuant to this paragraph will require formal notification to the applicant, OHCS, and RHS National Office.

10. OHCS will provide RHS with:
  - a. A list of all funded tax credit applications including project name and location, number of units, tax credits requested, amount of reservation, and project preference(s), if any.
  - b. A copy of the reservation letter sent to the applicant/sponsor.
  - c. A copy of the detailed cost breakdown used to estimate the amount of tax credits for which the developer would be eligible for those applicants that are seeking RHS financing.
  - d. IRS Form 8609 “Low Income Housing Credit Allocation Certification” with a copy of the cost data used to determine the development cost of the RHS financed projects.
11. RHS will provide OHCS with the name of Section 515, 514/516, 538 borrowers receiving tax credits who are in default on their RHS loan. OHCS will provide RHS with information concerning borrowers who, to the knowledge of OHCS, are in non-compliance with tax credit requirements.

## **TENANT AND MONITORING INFORMATION**

12. RHS will require signatures of all household members 18 years of age and over, as required by IRS Code on tenant certifications. RHS will require as a part of project management, and consistent with OHCS policy, use OHCS .1, Low Income Housing Tax Credit Program Tenant Certification (Form TIC-1) for all placement and move-in certifications, in addition to any other administrative forms required by RHS. The OHCS initial certification form will be required to be dated effective on or before tenant move-in.
13. Parties to this agreement understand RHS does not certify tenant tax credit income eligibility, nor does RHS certify to the owner's compliance with the requirements of Section 42, only that RHS tenant income is based upon certification or annual recertification, and that certification and recertification requires third-party verification. The owner certifies the information to RHS as being true and correct representations, and RHS performs periodic reviews and analysis of the data to verify compliance with RHS requirements.
14. RHS will provide OHCS with annual data concerning tenant income on affected RHS properties. Such data will be in a standard report format from the Multiple Family Housing Tenant File System (MTFS) database. The report will be signed and dated by RHS Servicing Specialist and will indicate the data is considered correct by RHS.
15. OHCS will accept the RHS physical inspection findings in lieu of conducting a separate inspection. Such findings shall be available for review prior to any OHCS audit and OHCS shall reserve the right to inspect as necessary to satisfy IRS code. File audits will continue to be conducted by OHCS as established by OHCS policy and procedures.

## **TAX CREDIT SET ASIDE FOR RHS PROJECTS**

16. OHCS will set-aside 15% of the state allocation of credits for USDA Rural Development 515, 514/516, 538 (interest credit, only) program eligible projects and other rural/farmworker targeted projects. A reservation or allocation of tax credits from this set-aside will be limited to projects that receive direct funding from RHS or meet rural/farmworker housing targets. The following additional conditions apply:
  - a. Projects receiving support in the way of a loan guarantee only, or other similar support, will not be considered for a reservation or allocation from the USDA Rural Development set-aside solely due to the loan guarantee participation.
  - b. Tax credit applications will be processed in the regular OHCS funding competition cycle. If RHS is unable to issue a certification of the availability of funding by the date OHCS receives notice that National Pool Tax Credits will be available, the RHS project related tax credit reservation may be canceled and that portion of the Rural Development set-aside reallocated as appropriate.

- c. The Rural Development set-aside is not an “entitlement” pool, but rather a “reserve” of credits for RHS project proposals that meet the OHCS scoring criteria. The purpose of the set-aside is to assure tax credits are available for RHS projects that meet scoring thresholds, but otherwise would not receive credits due to the competition from other higher scoring projects.

**HOME Designated Units with RD Rental Assistance**

- 17. HOME designated units in Rural Development financed projects will be treated as ‘tax credit’ units as described in Administrative Notice No. 3209 (1930-C). Accordingly:
  - a. Such treatment will allow tenant selection to be deferred until applicants for occupancy are available whose eligibility will allow the borrower/sponsor to meet HOME program obligations.
  - b. Rural Development Rental Assistance (RA) assigned to the designated HOME unit(s) will be retained; transfer of the RA to other eligible project tenants will not occur as otherwise would be required with RD financed developments.
  - c. The project owner is responsible for any cash flow deficits in the annual project budget as a result of applying this practice so far as Rural Development is concerned.

**OHCS Architectural Requirements**

- 18. In RHS/OHCS jointly funded projects, OHCS architectural standards will be adhered to as applied by the OHCS Architectural Consultant with consideration for RHS architectural constraints. OHCS architectural standards are published annually in both the OHCS funding application packages and in the Low Income Housing Tax Credit Qualified Allocation Plan.

**PERIOD OF AGREEMENT**

This agreement will remain in effect until terminated by written 30 day notification to either party.

**MODIFICATION OR AMENDMENT PROVISION**

This agreement may be modified by written agreement of RHA and OHCS. Requests for amendments to the agreement will be initiated by either party through written notification.

**ACCEPTANCE AND SIGNATURE OF EACH APPROVING PARTY**

Director	Date	State Director	Date
Oregon Housing and Community Services		USDA Rural Development Rural	
Housing Department		Services	

# EXHIBIT E

## RESIDENT SERVICES PLAN

*\* It is optional to submit this Plan with the Application. It will be required for submission if the project receives a reservation of funding*

Date: \_\_\_\_\_ Project Name: \_\_\_\_\_  
Sponsor: \_\_\_\_\_  
Sponsor Contact: \_\_\_\_\_  
Sponsor Address: \_\_\_\_\_  
Sponsor Phone: \_\_\_\_\_ Sponsor Fax: \_\_\_\_\_  
Management Agent: \_\_\_\_\_  
Project Location: \_\_\_\_\_  
Number of Units: \_\_\_\_\_ Bedroom Sizes: \_\_\_\_\_  
Target Population: \_\_\_\_\_ Income Levels: \_\_\_\_\_  
Projected number of children on-site at full occupancy: \_\_\_\_\_

Department Funding:

Trust Fund:	\$	HOME:	\$
HELP:	\$	LIHTC:	\$
OAHTC:	\$	ADF/Other:	\$

### Policy Statement

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

The anticipated outcomes of the Resident Services Plan are:

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

**Developing the Resident Services Plan**

**The Resident Services Plan contains four sections, each beginning with a statement of intent. Complete each section thoroughly and completely. There is no limit to the number of pages that can be submitted, but conciseness is encouraged.**

**PLEASE READ ALL QUESTIONS AND TRY TO ANSWER EACH ONE THOROUGHLY**

**Section One: Needs Assessment**

The intent of this section is to ensure that the Sponsor will employ a thorough and creative process to research, identify and describe the target population and assess their potential service needs. Contact with the local community including schools, churches, businesses, neighbors, service providers, and other affordable housing developments may be necessary in order to define the needs specific to potential residents. The Sponsor is encouraged to research additional sources, including census information, market studies, and the OHCS OMNIPLAN. Assumptions based on the Sponsor’s prior experience in designing services for this target population are also valuable.

Describe the overarching goal for housing and services as the project is envisioned. How do support services fit in the mission statement as a non-profit housing developer, or in the housing portfolio, if a for-profit developer:

X

Describe in detail the target population and their service needs:

X

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Describe the methods used, and identify the sources consulted in determining the service needs of the target population:

X

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**Section Two: Identification and Coordination**

*The intent of this Section is to demonstrate that the Sponsor has made linkages in the local community and the network of service providers in order to establish roles and relationships in coordination of services for this development. The Sponsor is encouraged to initially investigate an array of possible services and then refine and select those most appropriate to the target population.*

Describe the methods used to identify the available services in the community, including efforts to coordinate and collaborate on the design of the Resident Service Plan:

X

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*The intent of this section is to establish a method of evaluating the effectiveness of the Resident Services Plan and create the essential link to ongoing management of the development. Evaluating the plan will ensure that as resident populations are often in flux, the services can be adapted to changing needs. Effective delivery of services must be coordinated with the management agent, especially the on-site staff.*

*Describe the methods used to evaluate the specific services offered, including how and when the anticipated results will be measured:*

X

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If results are not as anticipated, describe what corrective action will be taken:

X

---

Describe the criteria used for selecting a management agent committed to coordination of resident services, including the hiring and training of “service sensitive” staff:

X

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Describe the process of ensuring ongoing coordination of the Resident Services Plan with the proposed management agent:

X

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## **EXHIBIT F**

### **PROPOSED CHANGES TO THE QUALIFIED ALLOCATION PLAN FOR 2007 AND UNTIL FURTHER AMENDED**

#### Introduction

For your consideration are the proposed changes in the administration of the State of Oregon's Low-Income Housing Tax Credit (LIHTC) program. Oregon Housing and Community Services (OHCS) is the designated (by the governor) administrator of the LIHTC Program. The Low Income Housing Tax Credit Allocation Plan or QAP governs administration of the LIHTC program. Described below are changes, proposed by OHCS to the QAP.

Listed below are the changes being proposed by OHCS for your approval to the 2007 QAP. If approved by the Housing Council these proposed changes will be put on the OHCS website for public comment, which will begin on April 10, 2006 until May 10<sup>th</sup> 2006 and two public hearings will be held in April to also take public comment. In June 2006 the recommended plan changes will be presented to the Housing Council for final recommendation.

Listed below are the significant changes to the 2007 QAP.

Beginning with the Spring 2007 CFC applications OHCS will require a market study be submitted with the application. The market study must be conducted by a firm on the OHCS approved market study analysts list and be no more than six months old at the time of application.

Adding a requirement that sponsors submit a complete final application for 8609's no later than 120 days after the last building is placed in service or in the case of acquisition rehabilitation projects 120 days after the project is determined to be substantially complete. Failure to submit the complete application within the 120-days could result in charges as outlined in the CFC application. Any additional review or analysis needed can also result in additional charges. The amount of these charges will be outlined in the CFC application so if we need to change them we won't have to amend the QAP.

Projects that have to complete a carryover application must apply on or before December 1; of the credit year. Applications received after December 1 of the credit year may be subject to a late charge and an additional daily late charge for every business day the complete application is not at OHCS.

OHCS will be requiring projects that show loans with deferred payment's, cash flow only loans and partnership loans, will need to get an accountant or legal opinion stating there is a reasonable expectation that the loan can be repaid at maturity.

OHCS will be adding language to the QAP that will give the department or a third party, the right to review of the final cost certification audit provided by the owner's accountant.

The department will add a charge for projects requesting additional funds after the original application has been approved. This charge will cover the cost of reviewing the new request, preparing the request for Directors approval or finance approval. The project will also have to pay the reservation charge on any additional credits awarded.

The QAP now defines preservation projects as "projects with 25% or more of the units with project based assistance from Rural Development, HUD or other providers of project based assistance, and expiring year 15 tax credit projects, the policy will now state that a preference will be given to projects with project based rental assistance.

Projects that receive a split year allocation (credits from two or more years allocations) will have to comply with the QAP that is effect on the earliest credit year awarded. Example: A project receives 300,000 in 2006 tax credits and 200,000 in 2007 the entire project must comply with the QAP in effect for 2006 tax credits.

2007 QAP will limit the number of applications or the maximum dollar amount of credits it will award to be the lesser of 2 applications from any one sponsor out of each region or a total credit amount awarded in any given funding round or region to \$700,000 per sponsor.

LIHTC projects must meet at least one of the federal preferences or the project will receive a deduction of one-point (1) on the application.

*The Department has initiated a tie-breaker policy for cases in which two or more projects rank the same and funding sources are too limited. If the projects are still tied after being examined against the first tie-breaker condition, the Department will go on to tie-breaker #2, and so on, until the tie is broken. The steps for the policy currently are as follows:*

1. *Project that best meets the Department's targeted Regional Allocations, set-asides to meet OHCS Strategic Plan goals or program requirements.*
2. *Project that has the greatest amount of committed project-based rental assistance or greatest amount of committed federal funds, the loss of which would cause the project to fail.*
3. *Project whose amount of OHCS funding sources and credits are closest to the amount of resources still available.*
4. *Project which has the highest percentage of rent below market, as submitted in the rent comparison tables in the market section of the CFC application.*
5. *Primary Market Area with the fewest new affordable projects funded in the last five years.*
6. *Sponsor with the fewer number of other projects funded in the same CFC round.*
7. *Discretion of the Department.*

## **EXHIBIT G**

### **COMMENT LETTERS WITH RESPONSE LETTERS**

#### **Minutes and Comments from the Public Hearings:**

##### **Portland, Oregon Building, Room 120-B:**

Karen Clearwater opened the public hearing for the 2007 Qualified Allocation Plan (QAP) for the Low Income Housing Tax Credit (LIHTC) Program this Thursday, April 20, 2006 at 10:00 a.m. Attending from Oregon Housing and Community Services Department (OHCS or the Department) are Karen Clearwater, Betty Markey, Theresa Easbey and Susan Bailey. We will be taking comments on the 2007 QAP that will remain in effect until amended.

The LIHTC Program is administered by the Internal Revenue Service (IRS) and credits are issued to each state by a dollar amount per population total. The Qualified Allocation Plan is a document under which OHCS will administer the LIHTC Program for the State of Oregon. The plan describes policies and procedures for the allocation and applying for credits, the method in which distribution and selection will be made, and the ongoing compliance for the tax credit period.

Recommended changes for the 2007 QAP are listed at the back of the document. Karen went over the allocation portion and Theresa discussed the compliance piece of the changes. Karen explained:

- Beginning with Spring 2007 Consolidated Funding Cycle (CFC) application round, OHCS will require a market study to be submitted with each application. Market study must be conducted by a firm of which OHCS has approved and is on the Approved Market Analyst List. This is a recommended best practice by the National Council of State Housing Finance Agencies (NCSHA), and is being adopted by the State for the Spring 2007 CFC application round.
- Sponsors are required to submit a complete final application for 8609s no later than 120 days after the last building is placed in service, or in the case of acquisition or rehabilitation projects, 120 days after they are determined to be substantially complete. If you do not submit the final application within this timeline, it could result in charges as outlined in the CFC application. The proposed schedule of charges is also available on the table in the back of the room. We've proposed this change so that the Department could better manage the process of closing out projects and allow us to better manage the time on the incoming projects that we have. We are starting to have a bottleneck of closing projects along with new projects are coming in.
- We are also proposing to have a complete carryover application in before December 1<sup>st</sup> of the credit year. Applications received after December 1, may be subject to a late charge, and an additional daily late charge for every business day the completed application is not in at OHCS.
- We are requiring that projects with loans with deferred payments, cash flow only loans, and partnership loans, get an accountant or legal opinion stating that there is reasonable expectation the loan can be repaid at maturity. This is another best practices suggestion, plus the IRS told all states at the NCSHA Conference that as of January 2006 the IRS will require these opinion letters in our files if audited. OHCS will be adding language to

the QAP which will give a 3<sup>rd</sup> party permission to review the final cost certification audit provided by the owners account.

- The Department will add a charge for projects requesting additional funds after original application has been approved. This charge comes from the cost of reviewing the new request, preparing the request for Director's approval or Finance Committee approval. The project will also have to pay the reservation charge on any additional credits awarded.
- The QAP now defines preservation projects as projects with 25% or more of the units with project based assistance, rural development, HUD projects with project based assistance, and now in addition expiring year 15 LIHTC projects. Policy will also state that there will still be a preference given to projects with 25% or more project based rental assistance.
- Projects that receive a split year allocation for credits for two or more years will have to comply with the QAP that was in effect on the earliest credit year awarded. Example would be if you got \$300,000 in 2006 credits and \$200,000 in 2007 credits, the entire project must comply under the 2006 QAP.
- 2007 QAP will limit the number of applications. The maximum dollar amount of credits will be awarded to the lesser of 2 applications from any one sponsor out of each region, or the total dollar amount awarded in any given funding round or region to \$700,000 per sponsor.
- LIHTC projects must meet one of the federal preferences or the project will receive a deduction of one point on its application. All the federal preferences are listed in the QAP.
- The Department has initiated a tie-breaker policy in cases where two or more projects rank the same and funding sources are too limited. If the projects are still tied after being examined against the first tie-breaker condition, the Department will go on to the second, and so on and so forth, until the tie is broken. The steps for the tie-breaker policy will be in the CFC application, not the QAP. The QAP references how the selection will be done.

Theresa continued with changes to the compliance section:

- The first change we've proposed is in the policy on property management units. Our main concern is that IRS regulations define common areas, in part, as areas readily needed by the project. OHCS has determined, based on past projects and on facts and circumstances, that a manager's unit is not legally required. Manager units detract from promised low-income set aside. This determination will be made on a case by case basis. OHCS does not scrutinize the activities of the manager, if an on-site manager is approved, rather the owner of the project must ensure the use conforms with the intent of the IRS in establishing such units. The position description must clearly indicate that the position is full-time. We've removed a fair amount of language that defined what we considered as full-time, and now that determination is done by the owner, not by us. That change is being proposed to reflect current industry practices in most recent formal and informal IRS documents.
- The next proposed change is under acquisition / rehabilitation tenant certification policy. We replaced the original language with "Projects that received an allocation for both acquisition and rehabilitation will not be required by the Department to complete tenant certifications for both sets of credits for the same household." After issuance of all 8609s, and after the project file is transferred to Housing Program Management Division (HPM) for monitoring, owners will be required to submit compliance reports identifying low-income occupancy for each building in a project at the end of each month, for the first year of the credit period. The HPM audit of any first year files will utilize these

compliance reports. This revision provides HPM with additional information for monitoring activities that encompass the first year of that credit period.

- The next change is under Compliance Monitoring Policy, under certification. This is referring to the annual owner certification. “Each building in the project is and has been suitable for occupancy taking into account local health safety and building codes or other habitability standards, and the state or local government unit responsible for making building code inspections did not issue a report of violation of any building or low-income unit in the project.” That is the same, but what we’ve inserted was the following sentence, “Additionally, all low-income units have been continually occupied, vacant but rent ready, or vacant for redecorating or minor repairs, for a period of less than 30 days throughout the reporting period.” This new language requires owners to report units that have been vacant for more than 30 days, without being made rent ready. We’ve also included the language, “No tenant can be evicted for other than Just Cause.” That was required as a result of Revenue Ruling 2004-82.
- Just after that is the annual owner certification on-line recording requirement. Beginning in 2007, for the reporting year of 2006, the owner certification and all related reporting attachments, will be accepted only through the Department’s compliance website. The annual owner on-line certification system will be in place, and password protected, by January 1, 2007. We’ve contracted with a software vendor, Housing Development Software (HDS) to provide compliance monitoring software and support, and this is a piece of that.
- Next change is under Compliance Data Tracking. We inserted an intent of the monitoring policy to track owner noncompliance with Section 42 and OHCS requirements to be used by the Department as its discretion. Issues that will be tracked and information compiled include, but are not limited to, the following items:
  - Any 8823 events, as a result of monitoring
  - Owner compliance with Department required reporting deadlines
  - Performance management agent employed by the owner.

This change is made in order to evaluate capacity of either managing agents or owners to undertake new tax credit properties. The Department is developing a meaningful way to track events of non-compliance to use as a tool during that evaluation process.

- The next change is under Non-Compliance Requiring Additional OHCS Staff Time. We’ve replaced the original language with, “the scope of non-compliance detected during any monitoring activity will be evaluated by the Department. At its discretion, the Department will expand the audit sampling for additional review. This expansion could extend to 100% of the units and or files that may have non-compliance issues. The Department reserves the right to require the ownership entity to hire a 3<sup>rd</sup> party auditor, acceptable to the Department, at the owner expense, to complete all or part of any additional monitoring, assessment, correction, status or excessive non-compliance. The previous QAP provided for OHCS staff to complete large scale reviews at the owner’s expense, but due to ever increasing workload of the compliance officers, and budgetary issues which preclude the addition of more staff, OHCS can’t ensure that our staff will be available to complete such reviews when needed.”
- The next change will replace some language about financial statements for the projects, with “other items that may need to be requested by the Department as a means to track project health may include, but are not limited to, audited annual financial statements for this project.” This section has been changed to clarify the Department’s right to request audited financial statements to both assist in monitoring and to collect data for future comparisons of actual project operating costs.

- And the last change is under Housing Credit Properties After Year 15: We inserted a paragraph notifying owners that the post 15 monitoring plan is included in the QAP as an exhibit. As of the last draft of the QAP, we had not yet made a plan for those projects that were going into their second phase, or their post 15-year phase. It is now attached for public comment.

That's it for our piece.

Karen announced that now we will take any public testimony, either in writing or in person via one of the microphones. If you are going to testify, please sign in and put your name, organization, and mark Yes that you wanted to testify. After we hear public testimony on the QAP, we will close the public hearing, and enter into some discussion and comments on charge increases, qualified contracts plan, year fifteen plan, and new division of regional allocation of funds from OHCS. There are handouts for each of these in the back of the room.

Robin Boyce, Housing Development Corporation: Requested the Department add a reference to the Exhibit in the QAP to the part Theresa was just referring to (page 61, two paragraphs, under Housing Credit Properties After Year 15).

Kate Allen, Director of Enterprise in Oregon: By email yesterday, I submitted a letter of comment to the Department encouraging the consideration of adopting increased green measures into the QAP and the application process. Basically, I'm asking that the Department consider taking its commitment to the program goal which articulates that the Department encourages the approaches in design, planning, building and financing of low-income housing that maintains quality and long-term sustainability, durability, and ease of maintenance of units. We would like the Department to consider taking that commitment to the next level by incorporating sustainable building principles based on Enterprise Green Community criteria or other similar criteria into the affordable housing programs that the Agency administers as a threshold requirement, a scoring factor, or a bonus element, as a number of other States have done. So, the request has been submitted in writing and I'll be happy to answer questions about it at your convenience. Thanks.

Robin Boyce, Housing Development Center: I really appreciate the gray shading. It helped identify the changed parts. I really appreciate all your time on the Year 15 work.

In terms of the fees, I would encourage 6 months instead of 120 days from the placed in service date. We have 75 days for a lien period. Generally, it takes a couple of months to get the accountants through their process. Sometimes we can start that before the lien period, but sometimes we need that basis at the end of the lien period. Then allowing a few days to reconcile with the draft audit and finalize the report. That can take up to six months. I understand your intent, and I think it is reasonable, I would ask that you reconsider the time period. We have a limited number of accountants, and all of us developers run in the same cycle, which drives how long the audit takes. We can pass on the penalties to them as needed.

On the resident services, referred to in several places in the document, but specifically the resident services plan comments in the back, we are concerned with the compliance requirement. The level of compliance requirements on resident services in relation to funding coming from OHCS for resident services is a concern. It is critical, as we improve our efficiency on this, that we coordinate between agencies and determine the primary funder,

who should have the primary responsibility for monitoring resident services. I understand they are partially funded through operating revenues, but I think it is a fairly indirect root that OHCS is funding resident services. OHCS is very minimally funding resident services positions around the State, and yet is increasing the amount of compliance requirements. It seems like an unfunded mandate from the State.

Finally, the marketing analysis: What essentially we will end up doing, is doing the market analysis on the front end, and an appraisal right before we get our permanent loan funding. Appraisal costs have not decreased because of the market analysis. OHCS is adding a significant cost upfront, because lenders won't let you use that market analysis once you get to the point of their loan approvals. I have some concern about how that has been driven.

Finally, you have a \$100 / hour rate for some of your reviews. I understand some of the penalties for coming back in, but that is a fairly hefty rate

I will send it written comments about qualified contract and year 15.

On Year 15, and the tie breaker references you talk about project based as being a tie breaker and also a preference within preservation. I know this is an ongoing discussion. One of the things that is happening with all the project based is their year to year contracts. So given where all our federal policies have been, I would encourage the State to think about whether a project at 25% of the units at 30% MFI is equivalent to project based. I know it's not for the immediate future, but in terms of what we are trying to preserve for the long-term, we are putting a whole lot of eggs in one basket, and thinking that the project based is going to save us over the long-term. I get a little bit nervous about that one. You've put a lot more weight on project based in here statewide. I understand we want to preserve those, but if we have a project with a lot of 30% units, or a significant number, that is more of a sure thing, than relying on the project based for the long-term. It also refers to project based rental assistance not capitalized, as small numbers. We have some projects that are working with all of the other rent subsidies that we have been trying to build in. Portland has just adopted a permanent funding for some of their rent subsidy programs. I'd like to make sure it is a small "P" project based, and not a large "P", that would qualify for the 25%.

Karen announced the public hearing was closed at 10:28 a.m.

**Eugene:**

I'm Karen Clearwater with Oregon Housing and Community Services and with me here today is Betty Markey, Katharine Daline, Susan Bailey, and Heather Pate. We are opening the public hearing on April 25, 2006 at 10:03 a.m. to take comments on the 2007 QAP that will stay in effect until amended. Comment period for the QAP began on the 10<sup>th</sup> of April and will continue until 5:00 p.m. on May 10<sup>th</sup> for written comment. The LIHTC Program is administered by the IRS. Credits are issued to each state by dollar amount per population. This year's dollar amount is \$1.90 per total population. The Qualified Allocation Plan is the document in which Oregon Housing and Community Services will administer the LIHTC Program for the State of Oregon. The plan describes policies and procedures for applying for credits, method used for allocation and selection of credits and the compliance policies under which the program will be monitored. I will go over really briefly the changes to the QAP on the allocation side. Katharine will go over the changes in the QAP on the monitoring side.



To begin with, this year, the changes in the QAP constitute a full rewrite of the QAP before it. All the changes that were made (policy, procedure, and allocation-wise) are highlighted and underlined within the document. Please note the supplemental handout in the back of the room that has the compliance changes highlighted and underlined. This same section in the draft QAP was not highlighted or underlined, so we went back and did so.

The first change in the QAP is that beginning with the Spring 2007 CFC Application, OHCS will require a complete market study be submitted with the application. The market analyst must be off of our approved market analysts list. Betty clarified that it would start in Spring 2007 to give people more time, since Fall 2006 applications are due August 4<sup>th</sup>.

Karen continued that OHCS is adding a requirement to the QAP that sponsors must submit a complete final application for 8609s no later than 120 days after the last building is placed in service, or in the case of acquisition/rehabilitation 120 days after the project is determined to be substantially complete. Failure to submit a complete application within the 120 days could result in charges as outlined in the CFC application. Any additional reviewer analysis needed, can also result in additional charges.

Projects that have to complete a carryover application must apply on or before December 1 of the credit year. Applications received after December 1 of the credit year, may be subject to a late charge and an additional daily late charge for every business day a complete application is not received. Karen clarified that carryover applications are due December 1, and expended the funds by June 30 of the following year. We've added the ability for us to charge people for not coming in on time, which we've had a problem with in the last few years.

OHCS will be requiring projects that show loans with deferred payment, cash flow only loans, and partnership loans will need to get an accountant or legal opinion stating there is a reasonable expectation the loan will be repaid at maturity. We are adding this because it is a requirement the IRS announced at the January NCSHA conference. They are requiring all States to have documentation of these types of loans in their files, or they will consider it not a loan, but a grant, which could be detrimental to the project. OHCS will be adding language to QAP that provides the Department or a third party the right to review the final cost certification audit provided by the owner's accountant.

The Department will add a charge for projects requesting additional funds after the original application has been approved. This charge will cover the cost of reviewing the new request, preparing the request for Director's approval or Finance Committee approval. Project will also pay the reservation charge on any additional credits awarded.

The QAP defines preservation projects as projects with 25% or more of the units with project based assistance, and HUD projects with project based assistance and expiring 15 year tax credit projects. The policy will state now that the preference will be to give projects with project based rental assistance a preference over the others (15 year expiring use).

Kent Jennings, Jennings Development LLC, asked for clarification if the change dealt with 9% CFC projects.

Betty clarified that it's only for preservation projects, like an acquisition rehabilitation of an expiring, rural development project, or an expiring HUD project. We have a 30% set aside for our preservation projects.

Kent asked for projects that are on the market that are expiring, if OHCS is trying to keep them affordable? Betty affirmed and added OHCS has a preference for projects with the rental subsidy with it, because if that project turns to market that subsidy is lost to the State and is not replaceable.

Karen added that OHCS has now added the LIHTC 15 year expiring use projects. They can now apply as a preservation set-aside project. A list of these expiring projects is or will soon be on our website.

Projects that receive a split year allocation of credits from two or more years, the QAP that was in effect during the earliest credit award will apply to the entire project. For example if you have \$300,000 in 2006 credits and \$200,000 in 2007 credits, the project must comply with the QAP in effect for the 2006 credits.

Projects must meet a least one of the federal preferences or the project will receive a 1 point deduction on their application. We never had any points assigned to meeting the federal preferences for LIHTC projects. We are not adding points for doing that, but we will take one away if you don't meet the federal preferences. They are listed in the QAP.

We also added a tie-breaker policy, which will be published in the CFC application, but it is also referred to in the QAP as for how we will determine how projects that are tied for scoring will be examined for their tie-breaker conditions.

Karen turned it over to Katharine to talk about the Compliance Monitoring portion.

Katharine introduced herself: I'm Katharine Daline. I work on the monitoring side. I am a Technical Advisor for Housing Programs Management. Our first change in the QAP was our policy on property management units. We changed the definition of full time property management unit to leave the discretion up to the project owner to outline in a position description the activities and ensure that the person is full time to that project based on the project's needs.

Kent proposed an example one community in Medford, they have two 9% deals and another one all in the same neighborhood, so it just provides the flexibility provided the job's getting done.

Katharine gave an example, if you are taking out a low income unit and making it a common area in one of the projects, and splitting that persons time, you need to make sure that the needs of that project that you're taking the unit out of are being met based on your description of the full time need for that unit. As long as you can demonstrate, not to OHCS necessarily, the onerous is on the ownership now to make sure they are using that unit appropriately. We have the right to disapprove a unit being taken out of the set aside if we feel a use is justified.

Kent asked, I am thinking of the initial set up and construction, you're saying these things with appropriate process can be obtained after project is up and running.

Katharine: We are doing conditional approvals right now; we're not amending any of the recorded documents if the project sees the need. We don't want to change the recorded documents and what you've selected initially.

Kent: For example, if we wanted to take one unit out for site manager, that there is clearly need for two positions, you can go back?

Katharine: We have approved additional units with a written request and documentation.

For acquisition rehabilitation tenant certification information, we've changed the language in the QAP to add that we have the right to request the occupancy information on low-income units in the first year of the credit period, the rent up of each unit in the first year of credits, so projects will have to be prepared if we request to give us those rent rolls, those records of lease up during the first year. We are also changing our language to state that we do not require you to complete a tenant recertification for acquisition and rehab credits. The first year certification will suffice for our purposes.

We included in the QAP a clause that requires owners on the annual owner certification to report units that have been vacant for more than 30 days without being made rent ready. We are taking a look at units that are sitting, not occupied and not turned for re-rental. This is a requirement for any project, both annually, or when audited.

Beginning in 2007 for reporting period 2006, we are going to owner on-line certification reporting. We are working with a new software package through Housing Development Systems (HDS) to set up a database where owners would enter their unit information and updates. Owners will be required to go online on our website and enter the certification information, so we can track the data. It will be password protected.

We've also included a clause that on the annual owner certification, owners will be required to certify that no tenants have been evicted for other than Good Cause. There is a Revenue ruling (2000-482) that the IRS issued guidance that no cause evictions are not allowed.

Kent: Currently State of Oregon allows no cause? But starting in 2007, regardless of where your project is or when it's built, it will be cause only.

Katharine clarified for the 2006 year. It's in effect this year for all projects past and current. It is retroactive.

Betty: HPM sent out a notice about this.

Katharine: It is the IRS interpretation of regulatory language. It came out with a Revenue Ruling that they've interpreted the language for just cause. They used to consider the three years at the end of the 15 year credit period. The opinion is that it will be decided by the courts if it is challenged. For now, you would certify that you have not evicted a tenant for other than good cause annually.

Kent: Is that the same as saying you went through with cause eviction procedures? Or can you go through a no cause but then certify that you in fact had good cause to do what you did.

Katharine: We are not going to monitor the activities of owners in terms of eviction, at this point. We are not defining Good Cause.

Karen: Currently the IRS has not said we have to determine it if it was good cause or not.

Katharine: Our responsibility is to inform owners. It generally considered that non renewal of the lease is considered a no cause eviction.

In the QAP, we've also included an advisory that one in 10 of the monitoring policies attract owner non compliance of Section 42 and OHCS requirements for use by the Department at its discretion. Issues that will be tracked and information compiled will include, but not limited to, the following items:

- Any 8823 event as a result of monitoring.
- Owner compliance which the Department required deadlines
- Performance of management agents employed by the owner.

We are collecting this information to evaluate the capacity of managing agents and owners for new project allocations. We are advising people that we will be using those tools to develop a system to report non-compliance as a factor in determining evaluating these sponsors and management agents.

Kent: So does that mean that as the years go on, when it comes to CFC applications, one of the criteria will be is it an owner with a clean record and are we using a management agent with a good record. So if you get owner that have had complaints and issues and compliance problems, then that is going to get scored down.

Katharine: Yes, possibly. Whatever we develop will be published.

We also added more on page 58 of the QAP. We had language before that allowed us to charge an owner for additional monitoring for problems. If we discovered that we needed to expand our audit beyond the normal audit to include more files or units, because there was more correction, we had the right to charge for OHCS staff time. We've changed that to say that we have the right to tell the owner to hire a 3<sup>rd</sup> party. To complete an audit to our satisfaction will have to establish an RFQ to have a list of auditors and we are doing this because we don't have the staff. Frankly, money can't buy staff to do additional audits anymore.

We also included a statement about the right to ask for annual audited financial statements for use in comparison of actual project operating costs and to assist in monitoring.

We have a post 15 year monitoring plan, included as an exhibit created just this year. It is up for comment, as well as in the QAP.

Katharine finished explaining the compliance changes.

Karen asked for public testimony. Since no one offered any public testimony, Karen closed the public hearing at 10:27 a.m.

**Comments from Kate Allen, Enterprise Foundation:**

July 17, 2006

Susan E. Bailey  
Housing Resources Section  
Oregon Housing and Community Services  
PO Box 14508, Salem OR, 97309-0409

RE: QAP Comments

Dear Ms. Bailey:

Enterprise Community Partners, formerly The Enterprise Foundation, launched the Green Communities™ Initiative (GCI) in October, 2004, to bring the benefits of green building including lower energy costs, healthier indoor environments, higher performing buildings, reduced greenhouse gas emissions and wider access to goods and services (such as through walkable communities and proximity to transit) to affordable housing.

Enterprise acknowledges that OHCS Program Goals “*Encourage approaches in design, planning, building and financing of low income housing that maintains quality and long term sustainability, durability and ease of maintenance for affordable units*”.

With the timely opportunity provided by the review and revision of the Qualified Allocation Plan we hereby respectfully request that OHCS consider taking its commitment to this Program Goal to the next level by incorporating sustainable building principles based on the Green Communities™ Criteria into the affordable housing programs the agency administers as a threshold requirement, scoring factor or bonus element, as a number of states have done.

Attached to this letter you will find a summary of the Green Communities™ criteria, and as you consider this comment I can provide additional documentation about particular elements of the criteria, or reference material from other state QAP programs that have adopted the criteria or parts of it.

I have also attached a summary of the significant first year accomplishments of the Green Communities™ initiative including the completion of two OHCS funded developments as GCI projects, CPAH’s Oleson Woods and Hacienda CDC’s Clara Vista Townhomes.

Thank you for your consideration of this comment and suggestion. I am available to follow up at your convenience.

Sincerely

*Kate Allen*

Kate Allen  
Director

Encl.

**Response to Kate Allen, Enterprise Foundation:**

June 19, 2006

Enterprise  
Attn: Kate Allen, Director  
520 SW 6<sup>th</sup> Ave., Suite 700  
Portland, OR 97204

RE: Comments on the 2007 Low Income Housing Tax Credit Qualified Allocation Plan (QAP).

Dear Ms. Allen;

Thank you for taking the time to comment on the 2007 QAP. OHCS is always interested in seeing that housing developed with department funds be both sustainable and built to green building standards. OHCS is willing to work with you and your agency to see what measures can be taken to further both of our missions.

We will not be incorporating a requirement for Green Building or Green Communities in the QAP, but feel it is important to continue working together to see what could be added to the Consolidated Funding Cycle Application that would achieve the best quality housing for the citizens of Oregon. We look forward to working with you soon on this issue.

Sincerely;

Karen Clearwater, LIHTC Program Rep.  
Housing Resources Section

Cc: QAP

## Comments from Lisa Rogers, CASA of Oregon, by email:

As outlined in the proposed changed to the qualified allocation plan (QAP) for 2007:

- Beginning with the Spring 2007 CFC applications OHCS will require a market study be submitted with the application. The market study must be conducted by a firm on the OHCS approved market study analysts list (for a list, see <http://www.oregon.gov/OHCS/HD/HRS/LIHTC/ApprovedMarketAnalystsList.doc>) and be no more than six months old at the time of application. (page 16, 28)

***What if you don't get funded on the first try. The cost of these studies is quite high and they don't carry over from one year to the next.***

- Adding a requirement that sponsors submit a complete final application for 8609's no later than 120 days after the last building is placed in service or in the case of acquisition rehabilitation projects 120 days after the project is determined to be substantially complete. Failure to submit the complete application within the 120-days could result in charges as outlined in the CFC application. Any additional review or analysis needed can also result in additional charges. The amount of these charges will be outlined in the CFC application so if we need to change them we won't have to amend the QAP. (page 18, 23, 27)
- Projects that have to complete a carryover application must apply on or before December 1 of the credit year. Applications received after December 1 of the credit year may be subject to a late charge and an additional daily late charge for every business day the complete application is not at OHCS. (page 18, 23)
- OHCS will be requiring projects that show loans with deferred payment's, cash flow only loans and partnership loans, will need to get an accountant or legal opinion stating there is a reasonable expectation that the loan can be repaid at maturity. (page 35, 42)

***Why is this a concern of OHCS?***

- OHCS will be adding language to the QAP that will give the department or a third party the right to review of the final cost certification audit provided by the owner's accountant.

***Are these then subject to the Open Records Law?***

- The department will add a charge for projects requesting additional funds after the original application has been approved. This charge will cover the cost of reviewing the new request, preparing the request for Directors approval or finance approval. The project will also have to pay the reservation charge on any additional credits awarded. (page 44)

***Is this only for LIHTC or for any OHCS funding (ie Farmworker Tax Credits, HOME, etc.)? Can the additional cost be included additional request?***

- The QAP now defines preservation projects as “projects with 25% or more of the units with project based assistance from Rural Development, HUD or other providers of project based assistance, and expiring year 15 tax credit projects, the policy will now state that a preference will be given to projects with project based rental assistance. (page 24)
- Projects that receive a split year allocation (credits from two or more years allocations) will have to comply with the QAP that is effect on the earliest credit year awarded. Example: A project receives 300,000 in 2006 tax credits and 200,000 in 2007. The entire project must comply with the QAP in effect for 2006 tax credits. (page 45)
- The per capita tax credit cap for projects will be the maximum of \$700,000 in annual credits or no more than two projects per sponsor per CFC application round, whichever is less. This requirement is waived for projects requesting 4% tax credits outside on the competitive process. (page 38)
 

*Can the “no more than two projects per sponsor” be waived? For example, a sponsor who is preserving low-income properties through acquisition/rehab from a troubled owner that includes more than two properties but requires a request of funding that is less than the \$700,000 maximum?*
- LIHTC projects must meet at least one of the federal preferences or the project will receive a deduction of one-point (1) on the application. (page 8)
- The Department has initiated a tie-breaker policy for cases in which two or more projects rank the same and funding sources are too limited. If the projects are still tied after being examined against the first tie-breaker condition, the Department will go on to tie-breaker #2, and so on, until the tie is broken. The steps for the policy currently are as follows:
  1. Project that best meets the Department’s targeted Regional Allocations, set-asides to meet OHCS Strategic Plan goals or program requirements.
  2. Project that has the greatest amount of committed project-based rental assistance or greatest amount of committed federal funds, the loss of which would cause the project to fail.
  3. Project whose amount of OHCS funding sources and credits are closest to the amount of resources still available.
  4. Project which has the highest percentage of rent below market, as submitted in the rent comparison tables in the market section of the CFC application.

*This gives an advantage to Portland Metro area. Perhaps 4 and 5 should be switched.*

  5. Primary Market Area with the fewest new affordable projects funded in the last five years.
  6. Sponsor with the fewer number of other projects funded in the same CFC round.



7. Discretion of the Department.  
(referenced on page 29; the actual process will be outlined in the CFC application)

- The Department has established a procedure for using any tax credits that were not allocated during established competitive processes to make sure they fully allocate all available tax credits. (page 43)
- Projects that receive an allocation of credits for both acquisition and rehabilitation will not be required by the Department to complete tenant certifications for both sets of credits for the same households. Ownership may *choose* to complete a rehab certification as well. After issuance of all 8609s, and after the project file is transferred to HPM for monitoring, owners will be required to submit compliance reports identifying low-income occupancy for each building in a project, at the end of each month, for the first year of the credit period. The HPM audit of any first-year files will utilize these compliance reports. (page 56)
- The Application for Tax Credit Allocation (Placed in Service Projects) now require that organizations submit a resident services plan. A copy of the Resident Services Plan form is located in Exhibit “E” (page 19)
- If you need a list of changes to Difficult to Develop areas, it is available at [http://www.oregon.gov/OHCS/HRS\\_LIHTC\\_Program.shtml#Program\\_News](http://www.oregon.gov/OHCS/HRS_LIHTC_Program.shtml#Program_News)

**Response to Lisa Rogers, CASA of Oregon:**

June 19, 2006

CASA, of Oregon  
Attn: Lisa Rogers, Housing Development Director  
212 E First Street  
Newberg, OR 97132

RE: Comments on the 2007 Low Income Housing Tax Credit Qualified Allocation Plan (QAP).

Dear Ms. Rogers;

Thank you for taking the time to comment on the 2007 QAP. Oregon Housing and Community Services (OHCS) is always interested in hearing your questions and concerns regarding the Low Income Housing Tax Credit Program. I would like to take this opportunity to respond to your questions.

OHCS understands your concern about the cost of ordering a Market Study and including it in with the CFC application, but we feel that it is very important that there be a market

for the housing being proposed and to understand the impact on existing affordable housing in the market area. The cost of a market study is a concern of ours as well and we have made available a loan fund to pay for the cost of the market study. This will be a two-year loan of interest only with principal and interest due at maturity. The loan for a non-profit would be 0% interest with principal due at maturity. For projects that don't receive a funding award the first time, OHCS will require an update if the study was conducted at least 6 months prior to the next application.

At the winter 2006 National Council of State Housing Agencies (NCSHA) meeting, States were told by both the Internal Revenue Service (IRS) and the accounting experts that if a project has any deferred payment, cash flow only or partnership loans, that an accounting or legal opinion stating that the loan has a reasonable expectation to be repaid must be in our project files or the loan should be considered a grant to the project and removed from basis.

When or if OHCS uses its right to have a third party review the final cost certification audit at the owner's expense, the results of the review and the original audit are exempt from a public records request under ORS 192.502 (23) (h).

OHCS may access a charge to applicants who request additional funds after a project is already funded for any of our resources. In the case of tax credits, the fee will be on the amount of equity generated from the sale of the credits. The charge for this request can be included in the request, if the funding source allows for that type of expenditure.

The Director of OHCS has the ability to waive the requirement that no more than two projects totaling no more than \$700,000 in annual tax credit allocation, or a maximum of \$700,000 per the Regional Advisor to the Director region, per CFC funding cycle, being requested by the same managing general partner, be adhered to, on a case by case basis.

The department's tiebreaker policy for addressing projects that tie in the CFC ranking process is incorporated into the QAP by reference and is part of the CFC application. I will forward your comment on this process on to Betty Markey, Housing Resource Manager, for consideration of switching item 4 and 5.

Thank you once again for taking the time to review the QAP and submitting your comments.

Sincerely;

Karen Clearwater, LIHTC Program Rep.  
Housing Resources Section

Cc: QAP

**Comments from Bobby Weinstock, Northwest Pilot Project:**

May 3, 2006

Re: Low Income Housing Tax Credit Program - QAP Comments

Dear Oregon Housing & Community Services Staff:

Here are some ideas to make the tax credit program more user friendly for the low income applicant and tenant. Please consider these ideas for inclusion in the 2007 Qualified Application Plan and/or Compliance Manual.

- 1) Encourage developers to set rents as low as possible in LIHTC buildings.
- 2) Encourage property owners to keep annual rent increases as low as possible.
- 3) Include nearby social service agencies in lease-up and tenant retention efforts.
- 4) Encourage office space in the building for social service staff to address tenant needs.
- 5) Streamline the application packet for prospective tenants and have written materials available in various languages.
- 6) Assist applicants as needed in completing required application paperwork and verifications.
- 7) Encourage property managers to participate in programs (like Fresh Start & Ready to Rent in Portland) which reduce admissions criteria barriers for applicants.
- 8) Ensure income-to-rent ratio requirements in admissions criteria do not exceed one and one half to one to enable lower income applicants to meet building eligibility requirements.
- 9) For buildings with all tax credit units, encourage property manager to verify tenant income only once at initial lease-up.
- 10) For elderly or disabled tenants on fixed incomes (Social Security, Veterans Pension, etc), allow property manager to verify tenant income only once at initial lease-up.
- 11) For buildings with all project-based Section 8, encourage property manager to obtain income verification from the local housing authority.

- 12) Insure income-eligible applicants seeking 30% MFI units with project-based Section 8 are not denied due to tenant rent calculated by local housing authority being over the maximum rent ceiling allowed by the tax credit program (i.e. the Housing Authority of Portland has a 35% rent burden in its Section 8 program)
- 13) Highlight the requirement to accept Section 8 vouchers.
- 14) Highlight the requirement any eviction be only for good cause.
- 15) Protect tenants from eviction or rent increase at the expiration of the tax credit agreement.

Thank you for your consideration of these tenant-friendly improvements to the tax credit program in Oregon.

Sincerely,

Bobby Weinstock  
Housing Consultant  
Northwest Pilot Project  
(503)478-6872

**Response to Bobby Weinstock, NW Pilot Project:**

June 19, 2006

Northwest Pilot Project  
Bobby Weinstock, Housing Consultant  
1430 SW Broadway, Suite 200  
Portland, OR 97201

RE: Comments on 2007 Low Income Housing Tax Credit Allocation Plan (QAP)

Dear Mr. Weinstock;

I would like to thank you for taking the time to comment on the 2007 QAP for the Low Income Housing Tax Credit (LIHTC) program. I am responding to your letter in the same order as you wrote your comments.

- 1) In the Consolidated Funding Cycle (CFC) application, all applicants are encouraged to develop projects that serve the lowest incomes possible while still presenting a project that is financially viable. OHCS also limits the amount of cash flow a project can take annually, which also limits the amount of rent being charged.

- 2) At the beginning of each project the rents are identified by the percent of median income as published by HUD and then the owner can't raise the rents above that limit until HUD publishes the new rents. These rents are usually published in February or March of each year.
- 3) All projects receiving OHCS funds and tax credits must develop a resident services plan. As part of that plan they must identify all of the service options for their tenants, along with who and how services will be delivered. OHCS does not expect the owners to deliver services already being offered by other providers in the area. Most of the project owners will enter into a memorandum of understanding with the existing service providers.
- 4) Owners can allow service providers to deliver services in the community space in the project. However they cannot rent office space to providers and have the cost of developing the space remain in the basis calculation.
- 5) As far as streamlining the application packet for prospective tenants and having the materials available in various languages, it is always encouraged to have the marketing and rental information in the language of the targeted population.
- 6) A certain amount of assistance is offered for all prospective tenants, however the assistance can only be in the form of answering questions and offering clarification on questions asked. The property management cannot tell the applicant how to fill out the application or do it for them.
- 7) OHCS is not a party to the agreement between the owner and the property management company so we do not encourage or discourage that they participate in programs like Fresh Start and Ready to Rent. If the project owner is proposing to serve tenants with rental history issues, we will require that the management and resident services plans address the corresponding services for the population.
- 8) The CFC application does ask the question about whether the ownership will use rent to income of one and one half to one. If they do, they receive 4 points in the application. This information should then be relayed to the property management agent, OHCS can enforce this when we monitor the project's compliance.
- 9) It is a requirement of Section 42 of the tax code to verify tenant income on an annual basis. We do not have the authority to relax that requirement to verifying income "only once at initial lease-up".
- 10) Again, we don't have the authority to change the annual income verification requirement.

- 11) If a project has project-based Section 8, then the housing authority would not be verifying income unless the housing authority owns and manages the project. Project-based Section 8 projects usually complete the verifications and corresponding certifications (Form 50059) independently. In these cases, they are allowed to use the 50059 and corresponding verifications in lieu of the tax credit income certification after move-in. At move-in, the tax credit certification must be completed. If the Section 8 assistance comes from a voucher, owners and managing agents have the flexibility to verify income by obtaining a statement from the housing authority, so long as the housing authority has verified the tenant's income within 120 days of the effective date of the certification.
- 12) The problem with the income-eligible applicants seeking 30% MFI units with project based Section 8 assistance is new due to the requirement imposed by the Housing Authority of Portland and we are granting waivers to tenants that qualify and have to pay 35% rents. We are allowing this only in the case of project based assistance and each owner needs to request this waiver.
- 13) I will answer 13, 14, and 15 here. The requirement to accept tenants with section 8 vouchers and the good cause eviction language will be highlighted in the QAP. The effort to protect tenants from rent increase or eviction at the expiration of the tax credit agreement or at the sale of the project is done through tax credit statute. The statute requires that at the end of the tax credit extended use period or sale of the property before the extended use period is met, the tenants will be protected from any rent increase higher than the published tax credit rents, for a period of not less than three years.

I hope this answers your comments and concerns. Once again thank you for taking the time to review the 2007 QAP. If you have any more questions you can call me at 503-986-0968 or email [karen.clearwater@hcs.state.or.us](mailto:karen.clearwater@hcs.state.or.us).

Sincerely;

Karen Clearwater, LIHTC Program Representative  
Housing Resource Section

Cc: QAP

**Comments from Jennifer Gates, Central City Concern:**

May 4, 2006

Housing Resources Section  
of the Oregon Housing and Community Development Department  
Salem, Oregon

Dear Susan Bailey,

Thank you for opportunity for dialogue about these issues.

I. Regarding the OHCS Charge Adjustments, and the deadlines implicit within those:

A. Projects should have 9 months from the Placed-in-Service date to submit an 8609.

- 1) The end of the 75 day construction lien period is often a starting date for calculations to be performed, because starting earlier means work may have to be redone.
- 2) Submitting a final tax application can require many people's participation: owner, hired project manager consultant, owner's financial staff, hired CPA, feedback from the limited partner, general contractor's financial staff. Multiple small delays among several of these parties can add up to big delays in completing the final tax application. The bigger a project, the more this might occur. Such cases may not sound compelling when reported to OHCS, but they are real.
- 3) The OHCS gap analysis is done at the same time as the final tax credit application. There can be many expenses during the months after PIS, some related to lease-up (which can take 6 months or longer), some not. An earlier deadline means we have to guess about those costs and you have to evaluate our guesses.
- 4) In addition, if the basis falls short or the PIS date differs from projections, a tax credit partner may increase or decrease the amount of equity they'll contribute to the project. It takes time to assess these situations and negotiate the repercussions. OHCS gap analysis should be done after 'the dust has settled'.
- 5) Overall, if we don't allow sufficient time to "do it right the first time", we're setting ourselves up for either a) having to go back and make corrections to the final tax application, or b) issuing 8609s that aren't as fair and accurate as they could and should be.

B. Relatedly, on page 51 – Changes to the developer fee are likeliest to occur during the 3<sup>rd</sup> – 7<sup>th</sup> month after the PIS date. The tax credit investor may instigate changes due to basis shortfall, late completion or early lease-up. The

QAP seems to require these be submitted at 90 days after PIS, but this timeline is unrealistic. Either you'll end up having to deliberate whether to charge late or re-evaluation fees, or the changes will occur after your gap analysis and 8609 issuance. Sometimes this latter situation will be an unfair burden to the project sponsor. Sometimes it will mean an unplanned (and unfair) benefit for a project sponsor.

C. Request for additional resources: The higher the fee, the more a project will have to ask from OHCS.

## II. Regarding other proposed QAP changes:

### A. Market study to be done for CFC application:

- 1) If a project fails to get an award, it's burdensome to redo the market analysis a year later.
- 2) Because the perm financing lender will require a more current market study, the CFC market study becomes a completely extra step and extra expense for a project.
- 3) In the case of housing for extremely low income tenants and supportive housing projects, market studies are mostly a waste of money anyway.
- 4) In areas with overall expensive or escalating rents, a detailed market analysis isn't necessary.

### B. When determining priority among projects,

- 1) the following are very important criteria: a) projects that commit to serving the lowest % AMI population for 20+ years; b) projects whose rents are noticeably lower than the surrounding housing market, because that situation rarely changes within a decade or two; c) projects in expensive rental markets, because that situation rarely changes within a decade or two.
- 2) In general, only some project-based rent assistance programs are reliable enough in the long-term to be weighted as heavily as the preceding criteria in #1.
- 3) In specific, section 8 project-based assistance isn't necessarily more reliable in the long run than other project operating and rent subsidies, so please don't give that program automatic priority.

### C. One year waiting list.

- 1) What happens when there's enough money in the spring round for a mediocre preservation project, while an excellent project is at the top of the waiting list from the fall round?
- 2) It would seem that projects should be ranked on the waiting list based on the points they received during the fall round assessment, and that the tiebreaker priority should ONLY apply if there's a tie. This in contrast to page 43 that



implies that projects on the waiting list may be ranked only by the tiebreaker priorities, without consideration of the prior and normal point system.

D. There are already many data demands on our housing staff: HMIS, PDC's, and others. The 'HDS' that OHCS wants to use will be expensive for us given that the software is probably incompatible with the pre-existing systems.

E. It will be difficult, maybe impossible, to get a CPA to opine to OHCS that every cash-flow-contingent loan is likely to be repaid within its term.

F. Allocation among the state's regions.

Allocating awards proportionate to the number of households below 50% of median income means that OHCS is predominately allocating based on the overall population distribution among the state's regions. Please consider basing the allocation on something more meaningful than the statewide distribution of households. What really matters is the number of households in various regions that experience a 'severe rent burden' or what HUD calls 'worst case housing needs', i.e. households that are unassisted renters with very low incomes (below 50% AMI) who pay more than half of their income for housing or live in severely substandard housing. Certainly such measures aren't perfect and consideration should also be given to the number of homeless and to the extent of overcrowding. But such measures are superior to the current allocation scheme, which can 'backfire' relative to poverty, housing needs, etc. See example below:

*Richville and Poorville each are home to 1000 households. In Richville, median income is \$100,000, and because of the definition of 'median', every census will always show that 500 households earn less than median income. In Richville, simple arithmetic dictates that 50% of median income is \$50,000. In actuality, it happens that 300 of Richville households earn less than \$50,000, i.e. are below 50% median income.*

*In Poorville, median income is \$50,000 and of course, the census shows that 500 households earn less than that median income. In Poorville, arithmetic dictates that 50% of median income is \$25,000. In actuality, it happens that 200 of Poorville households earn less than \$25,000, i.e. are below 50% of median income.*

*So therefore, if you allocate funds on the basis of how many households are under 50% median income, you'll allocate more half again as much funds to Richville as to Poorville.*

*Of course, the variable of housing costs makes a big difference, but even if Richville has higher housing costs than Poorville, do you really want to allocate half again as much money to a community whose median income is so high?*

HUD publishes extrapolations at <http://www.huduser.org/datasets/spectabs.html> estimating the number of households 'with conditions', i.e. households having at least one of the following housing conditions: lacking complete plumbing facilities, lacking complete kitchen facilities, with more than 1.01 persons per room, and either selected monthly owner costs greater than 30 percent of household income (1999), or gross rent as a percentage of household income (1999) of greater than 30 percent. A quick-and-dirty analysis, excluding such households above 50% of median income, would indicate that the four metro areas have 69% of Oregon's households 'with conditions', i.e. a greater proportion than the 55% you intend to allocate to them.

Thank you for considering these comments,  
Jennifer Gates  
Housing Development Coordinator  
Central City Concern  
232 NW 6th  
Portland Oregon 97209

From the HUD 'Affordable Housing Needs: A Report to Congress on the Significant Need for Housing – Annual Compilation of a Worst Case Housing Needs Survey.

**Finding 15.** All regions of the country share in worst case needs, with over 30 percent of very-low-income renters in each region—the Northeast, Midwest, West and South—experiencing worst case needs. Very-low income renters in the West are less likely to receive housing assistance (24 percent), and more likely to experience worst case housing needs (38 percent).

**Finding 16.** Central city, suburban, and rural areas of the country all have significant numbers of worst case needs. Over one-third of very-low income renters in both central cities and suburbs have worst case needs and in rural areas the proportion is approximately one-fourth. Very-low-income renters are less likely to receive housing assistance (24 percent) and more likely to experience worst case needs (36 percent) if they live in suburbs.

### **Response to Jennifer Gates, CCC:**

June 19, 2006

Central City Concern  
Jennifer Gates, Housing Development Coordinator

232 NW 6<sup>th</sup>  
Portland, OR 97209

RE: Comment on 2007 Qualified Allocation Plan (QAP);

Dear Ms. Gates;

This letter is in response to your comments and concerns on the 2007 QAP. I would like to thank you for taking the time to review the 2007 QAP.

I (A) In response to your request to allow more time to submit your final application, the department has changed the QAP to allow for 6 months after the last building is placed in service or in the case of acquisition – rehabilitation, 6 months after the last building is considered substantially complete, before the application would be considered late.

I (C) The reason the department is imposing a charge to applicants who are requesting more credits after initial award, is to cover the cost of reviewing, and preparing the request for Finance Committee and if approved amending program documents.

II (A) OHCS understands that the cost of ordering a market study to submit with the application is an additional cost burden to the sponsor, however we feel that it is very important that the project have a strong market and that we understand the impact on existing affordable housing projects within the primary market area. The housing finance department has developed a predevelopment loan fund to assist sponsors with the cost of ordering a market study, the application is available through our Housing Finance Section. If your project is not funded the first time you apply, you will be required to have an update to the original study if it is more than 6 months old prior to the second application. Market studies are only required if you are using LIHTC in your project, this is a federal requirement and can't be waived by the department.

II (B) The department has set as a priority the preservation of housing projects that currently have project based rental assistance. If this subsidy is not renewed (even for a limited time), it will be lost to the community and the state. We feel that we need to make every effort to see that these projects remain affordable to the lowest income tenants by retaining the rental assistance. We also understand the need to preserve all housing that serve very low-income tenants and will make every effort to see that all of these projects are preserved.

II (C) If projects are on the fall CFC waiting list and they rank higher than a project received in the spring CFC applications they could be considered for funding, if they ranked higher than spring applications and if they qualified as a preservation project. The basic reason for establishing a wait list for the fall CFC round is to have potential projects for awarding credits that are returned or for the national pool awards.

II (D) Regarding the HDS software, expense to owners and managing agents should be limited to minimal staff time for inputting the units on line and then periodically updating some of the tenant information. While we understand the concern, OHCS needed to purchase software that met our internal needs and spent more than two years evaluating different software packages. OHCS has been using HDS for our Section 8 TRACS system and it was logical to use HDS for our other programs so that when we have mixed funded projects, information from each funding source is available from one software source.

II (E) At the January 2006 NCSHA conference, the tax credit professionals and the IRS both stated that cash flow only, deferred payment or partnership loans provide the housing finance agency for their files an accountant or legal opinion letter stating that the loans have a reasonable expectation to be repaid, if the project want to leave the loan in eligible basis. OHCS understands that the equity partner in tax credit projects require this opinion letter as part of their due diligence. The department will use a copy of the equity partner's letter for our files as well. We are still researching a sample letter to offer to sponsors to complete this requirement.

If you have any further questions or concerns please contact me at (503) 986-0968 or email [karen.clearwater@hcs.state.or.us](mailto:karen.clearwater@hcs.state.or.us).

Sincerely;

Karen Clearwater, LIHTC Program Representative  
Housing Resources Section

Cc: QAP

**Comments from Robin Boyce, Housing Development Center:**

DATE: May 4, 2006  
TO: Karen Clearwater, Oregon Housing and Community Services  
FROM: Robin Boyce, Housing Development Center  
RE: Comments on the 2007 Qualified Allocation Plan

Thank you for the opportunity to comment on the Draft 2007 Qualified Allocation Plan. I have provided these comments verbally at the Portland public hearing, and am following up with a written summary of my comments. I appreciate the hard work that goes into a document this involved! I hope you will consider the following comments (*my comments are in italic, my specific recommended changes are underlined*) as the friendly, hopefully constructive recommendations they are intended to be!

**Financial Feasibility:** Page 15

- “Debt Service Ratio as recommended by best practices at 1.15 to 1.20...” *For projects with high operating expense to rent ratios (operating expenses/ net rental income = 50% or greater), such as Permanent Supportive Housing or housing serving households at 30%, projects that start with 1.20 debt covers usually fall below required debt coverage ratios and “go negative” before the end of the loan term. On these projects, our practice has been to assure that we have the required debt coverage ratio at the end of the loan term –e.g. year 20, using standard escalators (now 2 & 3% per year). Could you consider stating that “ as recommended by best practices at 1.15 to 1.20”, or higher if necessary to achieve the required (1.10 or 1.15) debt coverage ratios at the end of the loan term?*

**Resident Services,** Page 16

OHCS language proposed: “Sponsors, who receive Department resources, including but not limited to LIHTC, must include in their affordable housing development a provision for residents to access services appropriate to the identified needs of the target population. The anticipated outcomes of the resident services plans are:

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

*Clearly, many of us believe resident services are important in order for many tenant populations to be successful in their housing. However, there has been quite a bit of recent conversation within the housing industry on the appropriate role of OHCS in resident services evaluation and reporting.*

*The two objectives outlined above, I believe, are two quite different objectives (if partially overlapping). The first, while a laudable goal, appears to be a social service set of objectives, while the second appears to be more directly related to affordable housing outcomes such as affordability, quality of housing (including resident's right to peaceful enjoyment of their housing, issues affecting maintenance), financial stability of the housing (rent collection/ turnover), in addition to efforts to help be successful in their housing.*

*In noting OHCS's objectives in the QAP, I realize that asking for a clearer definition of OHCS's overall resident services role in affordable housing funding is a large question. However, I believe it would be very helpful if OHCS's Housing Committee, and key policy makers at OHCS engaged in a policy and funding level discussion with the housing industry around resident services. Topics could include OHCS' resident services goals, the funding OHCS provides to meet these goals, the public benefits from increased reporting, and the public costs to achieve the resident services objectives, the reporting costs by sponsors, and the administrative review of resident services reporting.*

*With a stronger understanding of OHCS's role and goals, it would seem that conversations on CFC questions and selection criteria related to resident services, as well as reporting requirements could then be worked through with the industry at the more technical level .*

### **Application for Tax Credit Allocation (Placed in Service Projects)... Page 18**

“The final application must be submitted to the department within 120 days”...

*Please consider amending 120 days to 6 months. The lien period is 75 days after the work is completed. Most work continues for at least a month after placed in service (final touches, punch list). Therefore the final payment cannot be documented until that payment is due and payable. Added to this, it generally takes a couple of months to complete the final eligible basis determination (audit), and a couple of weeks to reconcile with the audit and submit the application. Projects with plenty of excess basis are fine, but projects where the basis is close need these final invoices.*

*This appears on page 27 as well.*

### **Set Asides starting on Page 23**

- “A 25% set aside for preservation....or are expiring LIHTC projects which are currently offering rents 10% below market”. *I support this and appreciate OHCS's responsiveness on this issue. We have discussed monitoring the number*

of preservation projects (RD, Section 8 and LIHTC) to adjust the preservation set aside level upward if the demand by qualifying projects exceeds the amount in the spring round.

- Preservation projects include... In funding preservation projects, the Department will give preference to those preservation projects, the Department will give preference to those preservation projects where at least 25% of the units have project based rental assistance. I would encourage adding, or 25% of the units have rents or further restrict 25% of the units to have rents below 30% MFI.

### **Threshold Criteria Page 33**

Please consider incorporating criteria for using 4% LIHTC with tax-exempt bonds, allowing for bonds to be used for construction/bridge financing (e.g. 24 months), and then reduced to allow projects serving lower rent levels to meet the 50% test for the purpose of utilizing 4% non-competitive LIHTC, while serving lower income residents.

*This financial strategy has been critical to preservation efforts nation wide, as most projects with rents significantly below market (most states require that preservation projects have rents at least 10% below market) cannot support sufficient debt to meet the 50% of total project costs requirement.*

### **Financial Feasibility Page 35**

- “Primary Debt Coverage...” *RE Maximum Debt Coverage Ratio, please consider language from prior comment: or higher if necessary to achieve the required (1.10 or 1.15) debt coverage ratios at the end of the loan term.*

*Additionally RE “letter from either a Tax Accountant or Tax Attorney” deferred loans, it would be very helpful if OHCS could provide sample acceptable language for this letter.*

### **Competitive Allocation Limitations Page 38**

- “The per capita tax credit cap... per sponsor per CFC application round, whichever is less”. *Please consider clarifying that this requirement applies only to sponsors or entities related to sponsors per the Sections 267 (including developers related to sponsors per this definition). The words “developer” along with sponsor makes it appear (to me) that a contract developer working under contract for two separate (non-related) sponsors may not exceed this limit.*

### **Acquisition/Rehabilitation Tenant Certification Policy Page 56**

“After issuance of all 8609s, and after the project file is transferred to HPM...” *A couple of separate points:*

- *I am not sure what you are looking for in this requirement. if you are seeking tenant certifications of all initial move ins, then I think you might want to*

*explicitly ask for compliance documentation of all initial occupancies (since much of those occur before 8609s and transfer to HPM (what is that) – if that is an OHCS department, we do not necessarily know when that occurs.*

- *Please consider accepting the reporting formats of other funders. See comments below under Annual Owner Certification On-Line comments below.*

### **Compliance Monitoring Policy** Page 57

Under **record keeping** toward the bottom of page 58:

- “Each building in the project is and has been suitable for occupancy, taking into account... Additionally, all low income units have been continually occupied, vacant but rent ready, or vacant for redecorating and/or minor repairs for a period of less than 30 days, throughout the reporting period.” *Is this the IRS definition of available for occupancy or an OHCS interpretation? If it is an OHCS interpretation, please consider extending to 60 days. Repairs can sometimes require more than 30 days, particularly if there are other vacant units available, owners prioritize the quickest units to prepare to have as many units as possible available, and address more difficult turns sequentially. Doing all turns at once could require unnecessary added costs to hire outside services.*

### **Annual Owner Certification On-Line Reporting** Page 59

“Beginning in 2007 (for the reporting year of 2006), the Owner Certification of Continuing Compliance and all related reporting attachments will be accepted only through the Department’s compliance website. The on-line reporting system will be in place, and password protected, by January 1, 2007.”

*Please consider meeting with sponsor groups such as the Property and Asset Management Working Group to discuss this further. Recommendations include:*

1. Let sponsors know as soon as possible what data will be required for 2006, so that they will be tracking that information and prepared for the 2007 reporting requirements.
2. Coordinate your reporting requirements with those of your resident services draft reporting requirements and those of other funders to reduce duplicative reporting requirements on sponsors. *Currently, many sponsors are reporting on a tenant by tenant basis in multiple different formats for (to their investor, HMIS, Portland Development Commission’s Electronic Tenant Survey, and in the future potentially to OHCS on the resident services activities). HDC would be interested in working with OHCS to explore ways to integrate reporting needs of OHCS with other funders.*



**Housing Credit Properties After Year 15** Page 61

1. Consider adding reference in the QAP to wherever your new “Housing Credit Properties After Year 15” guidelines will be kept. Are they part of the QAP?

**Exhibit “H”:** Page 83

*Where are the “tie-breaker” policies (listed at the bottom of page 83) listed in the QAP. I have a comment on # 5, which I hope would be considered more as the relative strength of market demand, rather than the fewest number of affordable projects funded. In urban areas, there may be more projects developed, but that does not mean that the relative demand of those units is automatically less than in rural areas that have not had recent projects.*

Thank you.

**Response to Robin Boyce, HDC:**

June 19, 2006

Housing Development Center  
Attn: Robin Boyce, Executive Director  
2627 NE Martin Luther King Jr. Blvd.  
Portland, OR 97212

RE: Comments on 2007 Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan (QAP).

Dear Ms. Boyce;

Thank you for testifying at our public hearing and providing written comments on the 2007 QAP. I would like to take this opportunity to respond to your concerns expressed in your letter dated May 4, 2006.

Your concern over the recommended best practices of a Debt Coverage Ratio (DCR) of 1.15 to 1.20 is an issue that has troubled affordable housing developers all along. OHCS understands that not all projects can fit into that mold, however if the projects DCR needs to be higher, applicants will need to explain and provide support for the need to increase the DCR in their CFC or Bond and 4% applications to the department.

The merger of two separate state agencies in 1991, the State Community Services and the Oregon Housing Division, acknowledged the link between housing and services. Therefore, one of our goals and strategies has been to identify and address a coordinated strategy of housing and non-housing community development programs targeted to

combat the effects of poverty on vulnerable Oregon households, improve Oregonians lives, and the quality of our communities.

Our goal and policy for including a requirement of resident services in affordable housing comes from the belief, and supported now by research & experience, that supportive services and/or access to those services, tailored to specific low-income resident populations, result in greater social and economic stability and an enhanced quality of life. The stated policies in the CFC application are part of the larger scheme that housing plus services provides beneficial results not just for the residents but also for the property. Each housing site will have different results but they all have a goal self-sufficiency, independent living, enhanced life, and enhanced properties.

While OHCS has had a limited role in resident services in affordable housing, it has since 1991 been funding and monitoring other services such as energy assistance, rental assistance, homeless assistance, food and nutrition programs. These services have been operated through the network of Oregon Community Action Agencies. The hope has been that sponsors and developers of affordable housing would establish cooperation and coordinated links with the community action agencies, and not necessarily for housing owners/sponsors to be the service providers themselves.

OHCS is clear on its goal and mission to help provide affordable housing opportunities for Oregonians. It is also committed to continue promoting that residents have services or access to the support to receive them. OHCS is certainly open to engage in discussions with the housing industry to establish appropriate roles in the service requirement, provision, funding, evaluation and reporting of resident services. With more than a decade of accumulated experience between OHCS and the housing industry, there might be opportunities now to demonstrate the costs and benefits of services in affordable housing.

OHCS has taken into consideration your request to extend the time to receive the final application from 120 days to 6 months after the last building is placed in service or considered substantially complete. We will change the QAP to reflect 6 months after the last building is placed in service or in the case of acquisition rehabilitation, 6 months after the project is determined to be substantially complete, a complete final application must be submitted to the department or a late charge may be assessed.

OHCS is very committed to the preservation of affordable housing and we currently have the highest set-aside percentage for that purpose of all Northwest States. We will continue to evaluate the need for preservation funds against the other funding needs of the state.

OHCS has allowed the short-term use of bond cap for construction or bridge loans as long as the benefit to doing this is equal to or greater than the amount of equity generated by the sale of the tax credits. To allow this to be done without the benefit from the tax credit equity would be a major policy change that would require Treasury and Bond

Council approval. At this time our policy will remain the same and the QAP will not be changed.

At the January 2006 NCSHA conference in Washington DC, both the IRS and accounting experts informed housing finance agencies that to keep a deferred payment, cash flow only or partnership loan in basis for tax credits, the finance agency should have accountant or legal opinion letter in file that states the loan has a reasonable expectation to be repaid. We will continue to research if a sample or boilerplate letter is feasible.

Under the competitive allocation limitations we have defined the word sponsor to mean the “managing general partner” in a tax credit project.

#### Acquisition/Rehabilitation Tenant Certification Policy

Based on the comments provided, this paragraph has been revised as follows: “Starting at initial lease-up, OHCS may request from owners compliance reports identifying low-income occupancy for each building in a project. The reports will reflect month-end information for each month of the first year of the credit period. The reports will identify each unit, all adult tenant names in each unit, and the income level at move-in or initial certification. Additional information may be requested as needed. The OHCS audit of any first-year tenant files may utilize these reports.”

The purpose of the reports is to identify initial placements and transfers during the rehabilitation process. OHCS will consider accepting the reporting formats of other funders for this purpose.

#### Compliance Monitoring Policy (under record keeping)

OHCS compared the monitoring practices of several states regarding this issue. The language used for this portion of the Owner’s Certification of Continuing Program Compliance is based on common practices among the states surveyed. The Certification allows the owner to provide additional information for any question answered negatively. Any additional information is carefully considered in the determination if any non-compliance exists.

#### Annual Owner Certification On-Line Reporting

OHCS is currently testing the HDS software to ensure it works properly when released to the public for reporting on line. OHCS will forward instructions to owners and managing agents as soon as possible. The data required should not expand beyond what is currently required for year-end reporting. Most, if not all, owners or their managing agents are already tracking the information OHCS will be requesting.

OHCS is willing to consider coordinating reporting requirements with other funders after proceeding through the first reporting period. OHCS would like the opportunity to ask for feedback after the process is in place in order to better evaluate what the areas of concern may be once the software is actually used by our partners.

Reference to the text of the post-15 year monitoring plan has been added to the QAP.

The tiebreaker policies are incorporated by reference into the QAP and are printed in the CFC application. Your comments on # 5 will be forwarded to Betty Markey for consideration.

Thank you once again for taking the time to review the QAP and submitting your comments.

Sincerely;

Karen Clearwater, LIHTC Program Rep.  
Housing Resources Section  
Cc: QAP

**Comments from Micky Ryan, Attorney at Law, Oregon Law Center:**

May 10, 2006

Oregon Housing and Community Services  
PO Box 14508  
Salem OR 97309-0409

RE: QAP comments

Our office represents low income persons throughout the state of Oregon and we make these comments on their behalf.

1. Tax credits should only be used in neighborhoods where the market rent is above tax credit rents. If the purpose of tax credits is to provide lower cost housing, it doesn't make sense to use the tax credits to build housing units that have the same rents as the private rentals in the immediate area. The market is meeting the needs in such an area, and tax credits should be targeted to areas where it is not affordable to build or preserve private units that rent at tax credit rents. Increase the preference for 10% minimum below market rents to 20% if prior efforts have not been effective.
2. Create incentives for developers and managers to work with local Section 8 programs to reduce duplication in screening of applicants. For instance, with the tenant's permission, the income verification done by Section 8 could be accepted by the manager so that income did not have to be verified twice.
3. Fees and costs charged by the state to tax credit recipients should be charged on a sliding scale, with the lowest fees for recipients who are developing housing for tenants with the lowest income.
4. Create additional incentives for rents to be initially set as low as possible, and for rent increases to be as small as possible.
5. Create additional incentives for developers who provide links between tenants and social service agencies, including those developers who provide free offices for social service agencies. Monitor that buildings are fulfilling their Resident Services Plan that is part of the original application and require owners to keep specific records about the services.
6. Create incentives for developers and managers who make the application process as simple and inexpensive for the applicants as possible.
7. Require owners to provide applications and rental agreements in the primary language of the applicant/tenant.
8. Require owners to provide applicants with assistance in completing the application process.
9. Create incentives for owners who agree to and prove that they house persons who would be unable to rent at other apartments based on their rental history or other screening criteria.

10. Ensure income-to-rent ratio requirements in admissions criteria do not exceed one and one half to one to enable lower income applicants to meet building eligibility requirements.
11. Insure income-eligible applicants seeking 30% MFI units with project-based Section 8 are not denied due to tenant rent calculated by local housing authority being over the maximum rent ceiling allowed by the tax credit program (i.e. the Housing Authority of Portland has a minimum 35% of income rent burden in its Section 8 program)
12. Add a requirement that owners keep records of the denial of any application by a Section 8 voucher holder.
13. We support the additional requirement that owners certify that they have not evicted any tenant except for good cause. We would ask that the state review eviction notices if there appear to be a large number of evictions for cause.

Please let me know if you have any questions about these comments.

Sincerely,

Micky Ryan  
Attorney at Law

**Response to Micky Ryan, Oregon Law Center:**

June 19, 2006

Oregon Law Center  
Micky Ryan  
921 SW Washington Street, Suite 516  
Portland, OR 97205

RE: Comments on the 2007 Qualified Allocation Plan (QAP);

Dear Micky Ryan;

Thank you for taking the time to comment on the 2007 QAP. I would like to respond to your comments.

- 1) Tax credit projects must at a minimum have rents at 10% below market. It is stated in the Consolidated Funding Cycle (CFC) application that the department prefers all project rents be at least 20% below the market rent.
- 2) OHCS encourages all applicants to work with the section 8 program tenants and if the tenant has been screened by the local housing authority within 120 days of applying for a unit at a tax credit project we do allow the project management company to use employment verifications completed by the housing authority.

- 3) Charges under the Tax Credit program are established to allow the agency to recover the cost of running the program, therefore we established our charges based on the amount of work to review and administer the program. The income level of the tenants is not related to the amount of time and work the project will take.
- 4) OHCS reviews all funded projects to see that they are serving the lowest income level possible by limiting the amount of cash flow received from the project. This will determine how much rent the project can charge.
- 5) As part of applying for OHCS funding it is required that all applicants identify the needs of the population they are housing. Each project will have a resident services plan and we require owners to report to us the services provided and the outcomes reached.
- 6) OHCS has tried to reduce the cost of applying and to simplify the application; unfortunately these are very complex business deals and a great deal of due diligence is required. In order for OHCS to do the underwriting and review of program requirements there are reports and information that need to be provided in the application. These items do add a cost to submitting an application and can't be waived. The length of time the project must be made affordable and the requirements of the funding sources make it very difficult to simplify the application.
- 7) All Tax Credit projects by law are required to accept applications from the general public. OHCS always encourages management firms to provide tenant applications in the language of the tenants they anticipate to apply. However, the management agent is hired by the owner and not by OHCS so we do not control the application process.
- 8) OHCS does not allow the management agent to complete an application on behalf of a prospective tenant. The agent can read and explain the questions; they can arrange for interpreters or have family members assist them in understanding the question. But again OHCS cannot control this process.
- 9) OHCS does not encourage or discourage property management agents from using industry accepted screening criteria. However, we may fund projects that are specifically designed to house tenants with rental history problems. These projects have resident services that will assist the tenant in correcting this rental history problem.
- 10) Legislation requires that when OHCS resources are utilized, OHCS will give substantial preference to applicants who rent to tenants whose net income is 2 times or less than the rent. If this is documented, the applicant will receive a total of four points in the ranking of the application.
- 11) OHCS is addressing the issue of 35% rents to 30% of AMI tenants on a project basis, as it only applies to projects located in Portland. In projects where this is a problem we have allowed the project to charge the higher rent to the tenant and still be in compliance.
- 12) OHCS does not feel comfortable adding an administrative requirement to owners and managing agents that we are not monitoring and, because of budgetary issues, cannot commit to monitoring at this time.

- 13) It is our intention to randomly review evictions when inspecting and auditing projects.

I hope this answers all of your concerns and thank you once again for commenting on the 2007 QAP.

Sincerely;

Karen Clearwater, LIHTC Program Representative  
Housing Resources Section

Cc: QAP

**Comments from Michael Bodaken, National Housing Trust:**

May 10, 2006

Susan E. Bailey  
Oregon Housing and Community Services  
PO Box 14508  
Salem, OR 97309

Re: Oregon's Draft 2007 Qualified Allocation Plan

Dear Ms. Bailey:

The National Housing Trust is a national nonprofit organization formed to preserve and improve affordable multifamily homes for low- and moderate-income use. The Trust saves multifamily properties at risk of conversion to market rate housing and resolves the problems of "troubled" properties that suffer from physical deterioration and financial and social distress. Over the past 8 years, the Trust and its affiliate, NHT/Enterprise Preservation Corporation, have saved more than 17,000 affordable apartments in 42 states, involving the acquisition and rehabilitation financing of over \$200 million.

**The Importance of the Preservation of Existing Multifamily Housing**

The first step to resolving America's affordable housing problem is to preserve the affordable housing we already have. Existing affordable housing provides the foundation for millions of low-and moderate-income people to provide for their families, build their communities and pursue their dreams. Although our nation's housing market remains strong and homeownership rates are at record highs, many Americans—particularly the poorest Americans—rely on rental housing as a place to live. While the demand for affordable rental housing remains high, the supply of this housing is shrinking.

Many communities must face the choice to preserve their existing affordable housing or lose it forever. It is more efficient and less expensive to preserve this housing for several reasons:



- Preserving existing housing is much less expensive than building new housing. Preservation costs about 2/3 of replacement housing.
- Preservation maintains a mix of housing options in strong markets.
- Older housing is often located near jobs and transportation so preservation often lends itself to "smart growth" development.
- Renovation of existing housing is energy and resource efficient.
- Replacing existing affordable housing stock is often not realistic. Land, material, and labor costs and sometimes NIMBYism make replacements an unrealistic solution in most geographical areas.

**National Preservation Initiative**

1101 30th Street, N.W., Suite 400  
 Washington, D.C. 20007  
 202-333-8931  
 FAX: 202-833-1031

**Preservation is Important in Oregon**

As Section 8 contracts expire and owners have the right to convert to market rate, hundreds of thousands of affordable apartments are being lost. In recent years, the nation has lost more than 15% of previously subsidized apartments from our affordable housing stock, amounting to 300,000 lost apartments. In Oregon alone, approximately 1,300 HUD-assisted apartments were lost between 1995 and 2003.

Between 1965 and 1990, the nation invested over \$60 billion in a supply of affordable rental housing. Most of the affordable housing built during this period was financed or subsidized through federal assistance agreements that will expire if they are not renewed. Of the 1.4 million federally assisted units, hundreds of thousands are at risk of being lost through conversion to market rate, gentrification, deterioration, and condo conversion. The enclosed table illustrates Oregon's significant preservation problem - 200 project-based Section 8 properties with 6,794 assisted units will expire in Oregon before the end of FY 2011. This housing is a unique resource, providing homes for some of Oregon's most vulnerable families and elderly residents. According to HUD, the average income of those residing in federally-assisted and insured housing is less than \$15,000 annually.

The solution to the expiring Section 8 contract problem is technical and financial help to property owners, nonprofits and local governments to preserve affordable housing for future generations.

**LIHTC Preservation Trends Nationwide**

A large majority of states currently set aside or prioritize 9% Low Income Housing Tax Credits for preserving existing affordable housing. The Trust found that more than 40 state agencies, including the Oregon Housing and Community Services Department (OHCS) and the other agencies in your region, currently prioritize or set aside competitive tax credits to preserve and improve affordable subsidized housing (see attachment). Over the last year, at least four state agencies have created or increased set-

asides for the preservation and improvement of existing, affordable housing.

Most of the states in your region prioritize preservation in their Qualified Allocation Plans (QAPs), either through set-asides or awarding points. Looking at your neighbors, California has a 5% set-aside and points for preservation, and Nevada, Idaho and Washington all award points for preservation.

The Trust commends Oregon on its successful efforts to preserve and improve existing, affordable housing in Oregon. Since the beginning of 2003, at least 38 properties with 2,850 apartments have been preserved in Oregon with 9% and 4% Low Income Housing Tax Credits.

The Trust would also like to applaud Oregon on the leading the region with a 25% set-aside for the preservation of affordable housing, and encourage OHCS to award points for preservation in project scoring, as well.

### **Preserving Affordable Housing is Green**

Preservation of existing affordable housing is inherently energy and resource efficient. Rehabilitation produces less construction waste, uses fewer new materials and requires less energy than demolition and new construction. When feasible, we believe that green technologies and methods should be integrated into rehabilitation in order to improve energy efficiency, conserve water and other resources and use healthy building materials. These types of improvements benefit both residents and property owners through utility savings and lower maintenance costs, result in long-term sustainability, and provide residents with a better and healthier living environment. Attached is the Trust's Green Preservation Brochure which describes simple, yet significant ways to integrate water conservation, energy efficiency, and green building materials into preservation efforts.

- Integrating energy efficiency into rehabilitation of an existing building can include replacing old appliances and light fixtures with more energy efficient ones, making use of passive solar heat where possible, enhancing building weatherization through better doors, windows and insulation, and even in some cases the use of the photovoltaic technology to provide energy savings.
- Water and energy conservation can help keep affordable housing affordable by replacing older fixtures with low-water use fixtures, installing low-flush toilets, examining and repairing potentially leaky plumbing and designing landscaping with native or drought-resistant plants that require less water to maintain. Retaining common area laundry rooms in a multifamily building will save 300% more water and 500% more energy than installing in-apartment unit washer dryer connections. The already significant savings will increase greatly when the laundry room is equipped with high-efficiency washers and dryers.
- Rehabilitation can also integrate the use of green and health friendly building materials such as recycled content materials, low VOC paint and adhesives, and formaldehyde-free cabinetry. Many states have developed programs that provide incentives for integrating green methods and materials into rehabilitation of existing multifamily

housing. More than 30 states give preference to and/or award points in their Qualified Allocation Plans for energy efficiency, water conservation, and use of green building design and materials.

While we support OHCS's goal of sustainable design and building, we encourage the Department to award points in project scoring for preservation proposals that incorporate energy conservation such as energy efficient light fixtures, doors and windows, water conservation such as low-water use fixtures and common-area laundry rooms, and the use of green and health-friendly building materials.

#### **Conclusion**

It is fiscally prudent for states to balance their allocation of tax credits between new construction and preservation. In an era of scarce resources, preservation makes both policy and fiscal sense. I urge the Oregon Housing and Community Services Department to continue supporting the preservation of Oregon's existing affordable housing through maintaining the current preservation set-aside in the final 2007 and future QAPs. I also urge you to promote the use of green building techniques and materials for rehabilitation and preservation.

Thank you for the opportunity to comment on this important issue for the State of Oregon.

Sincerely,  
Michael Bodaken  
Executive Director

Enclosures (3)

#### **Response to Michael Bodaken, National Housing Trust:**

June 19, 2006

National Housing Trust  
Attn: Michael Bodaken  
1101 30<sup>th</sup> Street, NW Suite 400  
Washington DC 20007

RE: 2007 Low Income Housing Tax Credit Qualified Allocation Plan (QAP).

Dear Mr. Bodaken;

Thank you for taking time to comment on the 2007 QAP. We appreciate your support in our efforts to preserve and improve multi-family affordable rental housing. The additional information you provided on activities that other states have undertaken to support the preservation of multi-family housing was also helpful. It is reassuring to know that our efforts are being noticed. The State Housing Council has provided strong

support for OHCS's efforts to preserve project based rental subsidies on existing affordable housing properties and to create sustainable building design.

Sincerely;

Karen Clearwater, LIHTC Program Representative  
Housing Recourses Section

Cc: QAP

**Comments from Leon Laptook, Community Development Law Center:**

921 SW WASHINGTON, SUITE 454  
PORTLAND, OREGON 97205  
(503) 471-1180 (VOICE); (503) 248-1100 (FAX)  
[WWW.CDLCWEB.ORG](http://WWW.CDLCWEB.ORG)

DATE: May 10, 2006  
TO: Karen Clearwater, Oregon Housing and Community Services  
FROM: Leon Laptook, Director, Community Development Law Center  
RE: Comments on the 2007 Qualified Allocation Plan

We thank you for the hard work that you and OHCS staff devote to increasing affordable housing for low-income Oregonians and appreciate the opportunity to comment on the Draft 2007 Qualified Allocation Plan. The following comments are provided in the spirit of constructive advice and it is our hope that they will assist the Department in its efforts to finalize a plan that is fair and equitable for all parties and, most importantly, facilitates the creation of affordable housing.

**Projects Financed with Tax-Exempt Bonds: Short Term Use of Tax-Exempt Bonds-Page 56**

While we understand the Department's reluctance to embrace the short-term use of tax-exempt bonds subject to the bond cap, we note that the use of tax-exempt bonds for construction or bridge financing is a critical tool that has been employed in other states in efforts to preserve expiring use/prepaying HUD and RD projects. Many of these projects serve extremely low-income tenant populations (for instance, in Oregon the average income in RD Section 515 projects is \$9,561 annually) and have limited debt service capacity. In light of the relative scarcity of 9% tax credits, we recommend that this policy exception be liberally applied in order to use 4% credits in projects involving preservation of

projects for those residents most in need and those high priority groups identified in the State and local Consolidated Plans.

**Extended Use Period- Pages 61-62**

We wholeheartedly support the Department's efforts to decrease the administrative burden on owners during the extended use period. While it is implicit in the phrase "comply with other restrictions under the specific years QAP" (page 62), we think it would be useful to explicitly indicate the compliance provision that no tenants will be evicted other than for good cause. In addition, we would like the department to consider methods for more frequent physical inspection of properties during the extended use period. The current five-year schedule may be less frequent than advisable for aging properties. Such methods could include periodic self-inspections and self-certification by owners and agents, contracts with local housing authorities or local housing rehab programs for simplified inspections, a resident complaint driven system, etc.

**Annual Owner Certification On-Line Reporting- Page 59**

We are uncomfortable with the implementation of a system that will be applied retroactively. Sponsors should know prior to implementation the content and form of information that will be requested. If the system involves the electronic submittal of currently required certifications and reports that should be stated and alleviates our concern. If additional information will be requested it should be discussed with sponsors and industry groups in order that the administrative burden not be duplicative and onerous. A particular concern in this regard is the work that OHCS has initiated on a resident services reporting system. Sponsors currently submit a variety of reports on tenants to other funders, investors, etc. It would seem reasonable to us that efforts be undertaken by project funders to develop common reporting forms on this and other compliance issues in order to reduce the cost and increase the efficiency of compliance reporting.

Once again, thank you for the opportunity to comment on the QAP.

**Response to Leon Laptook, Community Development Law Center:**

June 19, 2006

RE: Comments on 2007 Qualified Allocation Plan (QAP)

Community Development Law Center  
Attn: Leon Laptook, Director  
921 SW Washington, Suite 454  
Portland, OR 97205

Dear Mr. Laptook;

Thank you for taking the time to review and respond to the 2007 QAP. All of the concerns and comments were reviewed by the OHCS finance committee and reported to Housing Council. I would like to address your comments and concerns expressed in your letter of May 10, 2006.

In regards to your suggestion about the use of Tax-Exempt Bonds for short-term use, OHCS has allowed the short-term use of bond cap for construction or bridge loans as long as the benefit to doing so is equal to or greater than the amount of equity generated by the sale of the tax credits. To allow this to be done without the benefit from the tax credit equity would be a major policy change and would require approval from Treasury and Bond Council. At this time we will not be changing our policy.

Regarding the concern on explicit language to cover the good cause eviction requirement, this language is very explicit in the annual Owner's Certification of Continuing Program Compliance. The submission of this Certification is an annual requirement through the entire term of affordability.

You also expressed concern over the five-year inspection schedule. The Post-15 Year Monitoring Plan includes language that allows OHCS staff the flexibility to inspect projects more frequently than once every five years, particularly if there are concerns regarding the physical condition. However, because of budgetary issues and, consequently, the restrictions on hiring additional staff as our portfolios continue to grow, OHCS does not feel comfortable in committing to more frequent inspections in the Extended Use Period. Your suggested alternatives are appreciated and will be considered in the future as we move into the Extended Use Periods for the first group of post-1989 projects.

We will be contacting owners and managing agents as soon as possible regarding the data we will need them to enter on our on line reporting system. Initially, the data input would include basic information about the project and the tenants that live there. On an ongoing basis, the information to be reported on line will include what is currently reported in the required attachments to the Annual Owner's Certification of Continuing Program Compliance. We do not anticipate any additional information requirements beyond what is currently collected in a different format.

I thank you again for reviewing the QAP and responding with your comments and concerns. If you have any further questions please call me at 503-986-0968 or email [karen.clearwater@hcs.state.or.us](mailto:karen.clearwater@hcs.state.or.us).

Sincerely;

Karen Clearwater, LIHTC Program Representative  
Housing Resources Section

**Comments from Kristen Karle and Anne Williams, St Vincent de Paul Society of Lane County, Inc:**

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MEMO TRANSMITTAL SHEET

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TO:	Karen Clearwater	FROM:	Kristen Karle , Anne Williams
COMPANY:	OHCS	DATE:	07/17/2006
RE:	Comments on the QAP		St Vincent de Paul Society of Lane Co.

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Dear Karen,

Following please find comments regarding the draft 2007 QAP from St. Vincent de Paul Society of Lane County, Inc.

“Beginning with the Spring 2007 CFC applications OHCS will require a market study be submitted with the application. The market study must be conducted by a firm on the OHCS approved market study analysts list and be no more than six months old at the time of application.”

*This will obviously increase upfront costs for applicants and not necessarily benefit the application. Market studies can range from \$3500 and much higher. Many projects go in for funding multiple years, multiplying the costs. The preliminary market study compiled by sponsors gives adequate information regarding market demand and the required market study gives more information after funding.*

“Sponsors submit a complete final application for 8609’s no later than 120 days after the last building is placed in service or in the case of acquisition rehabilitation projects 120 days after the project is determined to be substantially complete. Failure to submit the complete application within the 120-days could result in charges as outlined in the CFC application. Any additional review or analysis needed can also result in additional charges.”

*Please consider amending 120 days to 6 months. The lien period is 75 days after the work is completed. Most work continues for at least a month after placed in service (final touches, punch list). Therefore the final payment cannot be documented until that payment is due and payable. Added to this, it generally takes a couple of months to complete the final eligible basis determination (audit), and a couple of weeks to reconcile with the audit and submit the application. Projects with plenty of excess basis are fine, but projects where the basis is close need these final invoices. Also please consider making it more clear regarding ‘additional charges for review or analysis’, often times there are slight mistakes or OHCS asks for more detailed information after the application has been submitted.*

**Financial Feasibility:** Page 15

“Debt Service Ratio as recommended by best practices at 1.15 to 1.20...” *For projects with high operating expense to rent ratios (operating expenses/ net rental income = 50% or greater), projects that start with 1.20 debt covers usually fall below required debt coverage ratios and “go negative” before the end of the loan term. On these projects, our practice has been to assure that we have the required debt coverage ratio at the end of the loan term –e.g. year 20, using standard escalators (now 2 & 3% per year). Could you consider stating that “as recommended by best practices at 1.15 to 1.20”, or higher if necessary to achieve the required (1.10 or 1.15) debt*

coverage ratios at the end of the loan term? *Having acceptable DCRs at the end of the loan term is essential to the permanent lender and sometimes the only way to achieve this results in an Year 1 DCR higher than 1.20.*

“OHCS will be requiring projects that show loans with deferred payment’s, cash flow only loans and partnership loans, will need to get an accountant or legal opinion stating there is a reasonable expectation that the loan can be repaid at maturity.”

*Please provide an example of what you would require.*

“2007 QAP will limit the number of applications or the maximum dollar amount of credits it will award to be the lesser of 2 applications from any one sponsor out of each region or a total credit amount awarded in any given funding round or region to \$700,000 per sponsor”. *We think this discourages sponsors with capacity from meeting the affordable housing needs. If two projects score well and exceed the \$700,000 cap, and there is sufficient organizational capacity, the projects should be funded.*

Karen, I am adding my comments to Kristen’s response.

“Beginning with the Spring 2007 CFC applications OHCS will require a market study be submitted with the application. The market study must be conducted by a firm on the OHCS approved market study analysts list and be no more than six months old at the time of application.”

*The market analysis section has been very problematic for several application cycles. It would be helpful if the Department would clarify standards for this analysis, as even when a recommended analyst is used, the outcomes have not always been acceptable. Further, the cost burden of this element is potentially significant: if an application is not funded on first submission, then one assumes a second submission analysis will be required. This will effectively double the cost of this pre-development element. How will this impact those projects being developed for special populations?*

OHCS language proposed: “Sponsors, who receive Department resources, including but not limited to LIHTC, must include in their affordable housing development a provision for residents to access services appropriate to the identified needs of the target population. The anticipated outcomes of the resident services plans are:

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

Karen, I am not at all clear about these outcomes. Your first outcome simply indicates that a sponsor must define appropriate services, and then through collaboration or whatever, produce services. This will basically yield a vast array of services and intensity. How the Department will be able to evaluate either service efficacy or impact, I am not certain. You will not be merely comparing apples to oranges, but you will be trying to make comparisons between the entire contents of the fruit basket.

*The second stated outcome would seem to be more related to asset management than resident services.*

*I think none of us dispute the value of Resident Services to the well being of our tenants and our projects. But there is very serious concern throughout the state about the responsibility for cost of these programs.*

*The most critical issue is that you have created two unfunded mandates: the provision of Resident Services, and the reporting of the outcomes of those services.*

*I think there is an overarching issue: the Department really needs to be very clear in its thinking about intention and outcomes. Thought should be given to unintended consequences.*



**Response to Kristen Karle and Anne Williams, St. Vincent DePaul Society of Lane County Inc:**

June 19, 2006

St. Vincent DePaul Society of Lane County Inc.  
Attn: Kristen Karle and Anne Williams  
PO Box 24608  
Eugene OR 97402

RE: Comments on the 2007 Qualified Allocation Plan

Dear Ms. Karle and Ms. Williams

Thank you for taking the time to comment on the 2007 QAP. Your comments and concerns are important to OHCS to assist us in making policy decisions. I would like to take this opportunity to reply to your letter of May 10, 2006.

OHCS understands that the requirement to have a market study accompany your application will be an additional cost, but we feel very strongly that there be a market to support the type of project being proposed. The only way for OHCS to understand the many different market conditions that exist in the state is to require a complete market study with the application. In the past we have received market studies right before carryover and have found out too late that the project will have difficulty with lease up due to lack of demand for the type or size of the units proposed in the application.

Housing Finance has developed a predevelopment loan program to be used only to cover the cost of ordering the market studies. The maximum loan is \$7,500 with a maturity date of 2 years, see our web site for the application materials. Projects that do not get funded the first time will only have to order an up date report (no more than 6 months prior to application). This requirement only applies to Tax Credit applications.

I am glad to inform you that OHCS has taken your recommendation of extending the time period for submitting your final application from 120 days to 6 months. This change was incorporated in the final QAP submitted to the Governor for his signature.

The Debt Coverage Ratio recommended as a best practice to be 1.15 to 1.20 is not a change to the QAP and will remain as the guideline for projects wishing to apply for LIHTC's. In the CFC each applicant has the opportunity to provide an explanation and support documents for a DCR that is outside of the best practice.

At the January, 2006, NCSHA conference in Washington DC we were informed by both the IRS and Accounting Professionals that as a Housing Finance Agency we need to have proof in our files that all cash flow only, deferred payment and partnership loans left in

basis have a reasonable expectation of being repaid at maturity. This will need to be included in our files before we will issue 8609's. Projects that cannot provide a letter from their tax attorney or tax account will have to treat the loan as a grant and remove it from basis. At this point there is not a sample letter to provide to assist applicants; we will continue to research this possibility.

The limit of \$700,000 in annual credits or no more than two projects totaling no more than \$700,000 per managing general partner per RAD region per funding cycle was developed to help limit the number of applications competing for limited resources and to allow you as applicants to decide which project is ready to proceed.

The stated policies reflect how OHCS envisions the results of having housing plus services. In that regard, those policies provide general guidance for housing organizations to develop their own plan and implementation. OHCS values and believes in the notion that housing plus services provides beneficial results not just for the residents but also for the property. Each housing site will have different results but the goal is always self-sufficiency, independent living, enhanced life, and enhanced properties.

Evaluating the impacts or benefits of resident services for each project would be difficult, and it is not the intent of OHCS to evaluate each project. However the housing industry and OHCS have more than a decade of accumulated experience, plus other national studies and experiences, to demonstrate these outcomes for the housing industry as a whole, not for a single project. OHCS has not intended to evaluate the outcomes of services per project, but rather to see that the commitment from sponsors to provide services or access to services is delivered. We believe that if sponsors are providing the services or the access to them, two or more of the stated policy outcomes will result.

While OHCS has not directly funded the requirement of resident services, it has been encouraging sponsors to build the service provision or coordination into the operating expenses. OHCS has not asked that sponsors provide and mandate services for residents, which would be costly, but rather encourages a support system for services integrated into the housing and available to all residents.

OHCS is clear on its goal and mission to help provide affordable housing opportunities for Oregonians. It is also committed to continue promoting that residents have services or access to the support to receive them. OHCS is certainly open to engage in discussions with the housing industry to establish roles in the service requirement, provision, funding, evaluation and reporting of resident services.

If you have any other concerns or comments you can call me at 503-986-0968 or email [karen.clearwater@hcs.state.or.us](mailto:karen.clearwater@hcs.state.or.us). Thank you for taking the time to review the QAP and for your comments.

Sincerely;

Karen Clearwater, LIHTC Representative  
Housing Resources Section

**Comments from Ellen Johnson, Legal Aid Services of Oregon:**

May 10, 2006

Re: Comments on Draft 2007 QAP/LIHTC Compliance Manual  
Gender Discrimination/Domestic Violence/Income Verification

Dear Susan,

The purpose of this letter is to request that the Department clarify existing language in the Draft 2007 QAP (p. 58) and the current LIHTC Compliance Manual under "Alimony or Child Support Payments" (current Compliance Manual p.32) to clarify that through the process of household income verification, a head of household shall not be required to file for separation or divorce. Further, that, in instances of domestic violence, a head of household may verify their income through their own declaration.

In regard to the Compliance Manual, I recommend language similar to the following replace the current language:

"UNDER NO CIRCUMSTANCES SHOULD AN APPLICANT BE REQUIRED TO PROVIDE A COPY OF A SEPARATION OR SETTLEMENT AGREEMENT OR A DIVORCE DECREE IN ORDER TO ESTABLISH THE EXISTENCE OR NON-EXISTENCE OF SUPPORT FROM A NON-RESIDENT SPOUSE OR NON-RESIDENT PARENT."

AND,

"IN THE CASE OF A NON-RESIDENT SPOUSE OR NON-RESIDENT PARENT, THE APPLICANT'S/TENANT'S STATEMENT OR AFFIDAVIT OF THE AMOUNT BEING RECEIVED SHALL BE SUFFICIENT WHEN THE FILE CONTAINS AN EXPLANATION OF WHY THE FOLLOWING DOCUMENTATION COULD NOT OR SHOULD NOT BE PROVIDED:

- A. A PRINTOUT OR STATEMENT FROM THE SUPPORT ENFORCEMENT AGENCY (FOR CHILD SUPPORT VERIFICATION):
- B. A NOTARIZED AFFIDAVIT FROM THE PERSON PAYING SUPPORT:
- C. A COPY OF THE MOST RECENT RENT CHECK AND DOCUMENTATION REGARDING THE FREQUENCY OF PAYMENTS.

THE APPLICANT/TENANT SHOULD BE ADVISED THAT, IN THE CASE OF ACTUAL OR THREATENED DOMESTIC VIOLENCE, THE APPLICANT/TENANT MAY VERIFY THE PRESENCE OR ABSENCE OF SUPPORT THROUGH THEIR OWN DECLARATION.

YOU MUST INCLUDE THE AMOUNT SPECIFIED IN A DIVORCE SETTLEMENT, SEPARATION AGREEMENT OR OTHER LEGALLY BINDING DOCUMENTS, UNLESS THE APPLICANT CERTIFIES THE INCOME IS NOT BEING PROVIDED.

**Background and Justification.**

The language above reflects the reality many women face when separating from an abusive partner or spouse. In many instances, the woman, faced with hostility and often physical abuse, knows that a request for verification of support or lack of support will result in an escalation of violence or abuse. The current language in the compliance manual appears to mandate that managers require the woman to obtain a divorce or separation in order to verify income in these situations. I have attached a NY Attorney General Opinion that concluded that requiring a woman to obtain a divorce under similar circumstances was gender discrimination.

This is a current and ongoing concern in Oregon. My current client, Ms. Madalyn Echols, separated from her husband in early 2004. Together with her son she moved into a LIHTC unit in August 2004. The management company received a written statement from Ms. Echols' husband dated August 11, 2004, stating that he would not be part of the household nor would he pay support other than child support. In November 2005, the husband was convicted of an assault upon Ms. Echols and, as a condition of probation, was ordered to have no contact with her or the child. In the same month, Ms. Echols filed an application with the management company to move to a different unit within the complex. She was told she would have to obtain a copy of a divorce decree if she did not get a statement from her husband as to the presence or absence of support. Ms. Echols did not want to contact her husband, did not believe he would cooperate and did not want to file for divorce. However, in order to move into the other unit, she was required to do so.

The current LIHTC Compliance Manual does not provide sufficient guidance to managers who are attempting to verify income of households experiencing domestic violence. The current compliance manual appears to list ways of verifying alimony/child support in order of priority, and by way of inference, obtaining a separation, settlement or divorce decree, is identified by managers as the best and preferred method of obtaining verification. Where those documents exist, they should be used. However, in cases of domestic violence, a woman should not be forced by management to file for divorce in order to either obtain subsidized housing or to maintain the housing.

Ellen Johnson  
Legal Aid Services of Oregon  
230 NE 2nd, Ste A  
Hillsboro, Oregon 97124  
503-640-8228 x 104  
(fax) 503-648-0513

Encl. (1)

\*1 Office of the Attorney General

State of New York

Formal Opinion No. 85-F15

November 22, 1985

EXECUTIVE LAW, §§ 292.11, 296.2-a(a), (b) and (c), 296.5(a)(1), (2) and (3); 42 USC, § 3601, et seq.

A landlord may not (1) ask a prospective tenant to divulge his or her past, present or future marital status; (2) require a married applicant for housing, who has been subjected to domestic violence, to obtain a divorce as a condition to renting an apartment; (3) deny housing accommodations to all victims of domestic violence.

Ms. Karen Burstein and Ms. Marjory D. Fields  
Co-Chairs, Governor's Commission on Domestic Violence  
105 Court Street, 3rd Floor  
Brooklyn, New York 11201

Dear Ms. Burstein and Ms. Fields:

The Governor's Commission on Domestic Violence has raised three questions about the legality of certain alleged practices by landlords regarding battered women who apply, apart from their abuser, for rental housing. The questions are:

- (1) May a landlord or managing agent require an applicant for private or publicly-assisted housing to provide information about past, present or future marital status, including information, documentation or evidence about marital breakup or discord?
- (2) May a landlord or managing agent require an applicant for private or publicly-assisted housing to obtain a divorce as a condition to renting a housing accommodation?
- (3) May a landlord or managing agent deny housing to a battered woman seeking housing apart from her abuser on the presumption that the abuser will visit the housing accommodation and endanger the safety of the premises?

#### Inquiries into Marital Status

Section 296.2-a(c) of the Executive Law (Human Rights Law) provides that: "It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodations \* \* \* [t]o cause to be made any written or oral inquiry or record concerning the \* \* \* marital status of a person seeking to rent or lease any publicly-assisted housing accommodation". Under this section, an owner or manager of "publicly-assisted housing" (as that phrase is defined in section 292.11 of the Executive Law) is prohibited from inquiring into the marital status of housing applicants. A landlord of publicly-assisted housing thus may not ask a prospective tenant whether she is married, divorced, separated, widowed or single. The section contains no exceptions. Accordingly, a publicly-assisted landlord may not inquire into the marital status of a prospective tenant even if the landlord has reason to believe that the prospective tenant has been subjected to domestic violence. Owners and managers of private housing are subject to the same prohibition. They are barred from making any "record or inquiry \* \* \* which expresses, directly or indirectly, any limitation, specification or discrimination as to \* \* \* marital status, or any intent to make such limitation, specification or discrimination" (Executive Law, § 296.5[a][3]; emphasis added).

\*2 Thus, like publicly-assisted landlords, private landlords may not ask questions seeking information about a prospective tenant's marital status (New York State Division of Human Rights, Rulings on Inquiries, 3 CCH Employment Practices Guide, ¶ 26,050). Again, this is so whether or not the applicant has been subjected to domestic violence. A landlord may not circumvent the prohibition against asking about an applicant's present marital status by inquiring into her past or future marital status, or by asking about marital breakup or discord.

Requirement that an Applicant Obtain a Divorce

A requirement that a housing applicant obtain a final decree of divorce as a condition to renting private or publicly-assisted housing also violates the Human Rights Law. First, enforcement of such a requirement necessarily entails an inquiry into the applicant's marital status. As discussed above, landlords of both private and publicly-assisted housing accommodations are prohibited from making such an inquiry (Executive Law, §§ 296.2-a[c], 296.5[a][3]).

Further, a requirement that an abused applicant obtain a divorce violates sections 296.2-a(a) and (b) and 296.5(a)(1) and (2) of the Human Rights Law because, as discussed below, it has a disproportionate impact upon women, and is not justified by any business necessity. These sections make it an unlawful discriminatory practice for any covered landlord to refuse to rent to a person, or to discriminate in the terms, conditions or privileges of a housing accommodation, because of the sex of the applicant or tenant. A prima facie case of discrimination under the Human Rights Law is established when a policy has the effect of discriminating against members of a protected class

(*People v New York City Transit Authority*, 59 NY2d 343, 348- 349 1983]; *Matter of Sontag v Bronstein*, 33 NY2d 197, 201 [1973]; *People v Eleven Cornwell Co.*, 695 F2d 34, 44 [2d Cir, 1982] ). See also, *Betsey v Turtle Creek Associates*, 736 F2d 983, 987 [4th Cir, 1984] [Fair Housing Act, 42 USC § 3601, et seq.]; *Robinson v 12 Lofts Realty, Inc.*, 610 F2d 1032, 1036-1037 [2d Cir, 1979] [Fair Housing Act]; *Williamsburg Fair Housing Committee v New York City Housing Authority*, 493 F Supp 1225 [SDNY, 1980] [Fair Housing Act] ).

A policy requiring married applicants who were the subject of domestic violence to obtain a divorce has a disproportionate impact upon women. According to the United States Justice Department, 95% of all assaults on spouses or ex-spouses between 1973 and 1977 were committed by men (United States Department of Justice, Bureau of Justice Statistics, Reports to the Nation on Crime and Justice, pp 21 and 22, Oct., 1983).

One study of abuse between spouses found that "in 29 out of every 30 such cases, the husband stands accused of abusing his wife" (Leeds, Family Offense Cases in the Family Court System: A Statistical Description, Henry Street Settlement Urban Life Center [Nov., 1978, p ii], cited in *Bruno v Codd*, 47 NY2d 582, 586 n 2 [1979] and in *Thurman v City of Torrington*, 595 F Supp 1521, 1528 n 1 [D Conn, 1984] ).

Accordingly, a policy that battered spouses obtain a divorce as a condition of eligibility for housing establishes a prima facie case of sex discrimination.

\*3 Once a policy is shown to have a disproportionate impact upon a protected class, the defendant must demonstrate a business necessity justifying the policy (*People v New York City Transit Authority*, 59 NY2d at 349; *Matter of Sontag v Bronstein*, 33 NY2d at 201; see also, *Betsey v Turtle Creek Associates*, 736 F2d at 988; *Resident Advisory Board v Rizzo*, 564 F2d 126, 149 [3d Cir, 1977]; *United States v City of Black Jack*, 508 F2d 1179, 1185 [5th Cir, 1974] ). Cf., *McKenna v Peekskill Housing Authority*, 647 F2d 332 [2d Cir, 1981] [landlord must adopt the "least intrusive" means to ensure tenant safety where

privacy and associational rights are involved] ). A rule barring all undivorced abused spouses is not dictated by business necessity as it does not appear to further significantly a landlord's legitimate objective of securing a safe environment for tenants. Thus, a requirement that an abused wife obtain a divorce would impact disproportionately on women without valid business justification. The requirement thus violates sections 296.2-a(a), (b) and (c) and 296.5(a)(1), (2) and (3) of the Human Rights Law.

#### Categorical Refusal to Rent to Victims of Domestic Violence

An across-the-board rule barring rentals to victims of domestic violence would also violate Executive Law, §§ 296.2-a(a) and (b) and 296.5(a)(1) and (2), as it too would have a disproportionate effect on women and is not justified by business necessity. The vast majority of domestic violence victims are women. In 1983 approximately 70% of the petitioners seeking orders of protection in family offense proceedings in Family Court were wives seeking protection from their husbands. In only 7% of the cases were husbands seeking orders of protection from their wives (New York State Office of Court Administration, 1983 Annual Report, Family Offense Proceedings, January 1 to December 31, 1983). The argument in support of an across-the-board ban on renting to victims of domestic violence is that notwithstanding any assurances she may give, a victim of domestic violence is likely to be a target of further abuse even after she moves into her own apartment, thereby endangering the building's tenants. A policy barring all former victims of domestic violence, however, would appear broader than necessary to further the landlord's legitimate goals. In public housing eviction cases, both Federal and State courts have required that some causal connection be shown between the sanction of eviction and the tenant's conduct. Courts have thus held that tenants cannot be evicted solely because of the acts of the tenant's non-resident relatives (*Tyson v New York City Housing Authority*, 369 F Supp 513, 518 [SDNY, 1974], quoting from *Scales v United States*, 367 US 203 [1961] ). Accord, *Knox v Christian*, 96 AD2d 490 (1st Dept, 1983); *Hines v N.Y.C. Housing Authority*, 67 AD2d 1000 (2d Dept, 1979). Cf., *Tyson v New York City Housing Authority* (plaintiff states a claim in alleging that eviction because of criminal acts of non-resident relatives violates constitutional rights).

\*4 By analogy, the violent conduct of a spouse or other party should not be conclusively attributed to a battered woman so as to prevent her from obtaining housing. A battered woman seeking housing apart from her abuser, with no intention of consenting to future cohabitation with him or of permitting him to enter the dwelling, may not be prevented from renting solely by reason of the violence previously displayed by a third party. A landlord may adopt reasonable, non-discriminatory rules to protect against assaults upon tenants or damage to the landlord's property. However, a categorical exclusionary policy against battered women indiscriminately penalizes victims of domestic violence (and any children they may have), goes further than necessary to protect the landlord and other tenants and thus violates Executive Law, §§ 296.2-a(a) and (b) and 296.5(a)(1) and (2).

Very truly yours,

Robert Abrams  
Attorney General  
1985 N.Y. Op. Atty. Gen. 45, 1985 WL 194069 (N.Y.A.G.)

**Response to Ellen Johnson, Legal Aid Services of Oregon:**

June 23, 2006

Legal Aid Services of Oregon  
Attn: Ellen Johnson  
230 NE 2<sup>nd</sup>, Suite A  
Hillsboro, OR 97124

RE: Comments on 2007 Qualified Allocation Plan (QAP)

Dear Ms. Johnson;

Thank you, for taking the time to review and comment on the 2007 QAP. We are reviewing your request for a language change in the LIHTC Compliance Manual. We appreciate your efforts to bring this issue to our attention and provide us with proposed language changes. OHCS will take into consideration your comments and consider your recommendations in the next update to the LIHTC Compliance Manual.

If have more questions or concerns you can call me at 503 986-0968 or email [karen.clearwater@hcs.state.or.us](mailto:karen.clearwater@hcs.state.or.us).

Sincerely;

Karen Clearwater, LIHTC Program Representative  
Housing Resources Section

Cc: QAP



**Comments from Anna Geller, Geller Silvis and Associates, Inc.:**

-----Original Message-----

From: Anna Geller <ageller@teleport.com>

To: Betty Markey <Betty.Markey@state.or.us>

Sent: Wed May 10 17:03:40 2006

Subject: 2007 QAP Comments

Hello Betty,

I am forwarding to you our comments on the draft 2007 QAP document dated April 10, 2006. Other than the fact that a lot of good quality work appears to have gone into this draft, we have the following three comments:

1. The QAP should require that all tax credit awards go before Housing Council for a vote. As things are today, the Director makes final decisions on all awards and no award requires Council approval unless there is a related state loan or grants in excess of \$100,000 (non cumulative). In Oregon, the Department allocates an amount of credits that equates to more than \$60,000,000 annually. This is one of the largest programs the department administers, when measured by dollar volume). With only one individual as the decision point of this monetary distribution the Governor is at risk of matters appearing to be subject to "influence" especially since the Director is an appointee of the Governor. Historically, there has been a certain amount of corruption in the allocation of tax credits (in other states) when developers were effective at influencing one or two key people. As you know, prison sentences have been involved. Even though this is unlikely to happen in Oregon, I believe under the current system there is a clear weakness in this area, and this weakness presents a risk to the orderly administration of state government. As you know, Governor Kulongoski has gone to great lengths to restore confidence in state government and I imagine this step would be very consistent with his standards.

2. The QAP should state what the appeal process is when an application is not funded. In prior years distant, this was included in all QAPs and for the department's interest, as well as for its "partners", this should be included in any explanatory documents such as the QAP. There is very clear law on this point, and I think the Department would help itself by pointing out the statute.

3. The Department should clarify what it means by "Sponsor" and by the concentration restrictions of applicants set forth in the current draft. At the public hearing you gave a helpful explanation that Sponsor meant the Managing General Partner in the tax credit partnership. The clarification should be whether this is during the application process and whether, if, in a turn-key development situation, a Sponsor may be a contemplated Managing General Partner. For example, a non profit CDC may want to engage two different turn key developers to develop projects. At some future point, upon completion of tax credit delivery, construction warranties, or whatever other benchmark, the non profit would then step in. We believe the proposed restriction on concentration of applicants is a good one, but believe it would be in the department's

interest to not have that restriction apply after performance and delivery of all credit requirements (e.g., Form 6809).

Thank you for your consideration of these comments.

Anna L. Geller  
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**Response to Anna Geller, Geller Silvis & Assoc:**

June 19, 2006

Geller, Silvis and Associates, Inc.  
Attn: Anna Geller  
9139 SW Morrison St.  
Portland, OR 97225

RE: Comments on the 2007 Qualified Allocation Plan (QAP)

Dear Ms. Geller;

Thank you for taking the time to review and comment on the 2007 QAP. I have taken your questions and concerns to Oregon Housing and Community Services Finance Committee and Housing Council. Following is the results of the presentations:

The Interim Director and Housing Council are still discussing your suggestion that Housing Council approve all tax credit allocations. We do not see this being resolved until a new director is in place and more research is done. Until then the QAP will remain as written. However, staff will provide Housing Council with a short overview of the funded tax credit projects for each funding cycle.

The request to have an appeal process for projects not awarded tax credits through the CFC application process will not be implemented at this time.

Several respondents also asked for clarification on the term "sponsor". The following definition was added to the QAP for sponsor: "the managing general partner."

I hope this letter has answered your concerns and thank you again for responding to the 2007 QAP.

Sincerely;

Karen Clearwater, LIHTC Program Representative  
Housing Resources Section

## EXHIBIT H

### HOUSING CREDIT PROPERTIES AFTER YEAR 15

The federal low-income housing tax credit (“Housing Credit”) was created by Congress in 1986 and is administered in Oregon by Oregon Housing & Community Services (OHCS).

Properties that were awarded Housing Credits on or after January 1, 1990 must comply with restrictions as embodied in the recorded Reservation and Extended Use Agreement (EUA) and the Declaration of Land Use and Restrictive Covenants (Declaration).

After the initial 15-year Low-Income Housing Tax Credit (LIHTC) Compliance Period has expired for these allocations, the Internal Revenue Service (IRS) no longer receives notification of noncompliance. Consequently, the onus for dealing with noncompliance during the remainder of the affordability period rests with the state allocating agency.

OHCS has determined during the Extended Use Period the administrative burden to owners can be reduced by relaxing some of the inspection, audit, reporting, and eligibility criteria, providing a more palatable way to operate tax credit properties and maintain compliance during the Extended Use Period when the tax benefits have been exhausted. Monitoring for compliance during the Extended Use Period will ensure the spirit of the program is preserved, the housing will continue to serve the people for whom it was intended, and the OHCS mission continues to be met.

#### **Definitions**

**Compliance Period:** with respect to any building, the period of 15 taxable years, beginning with the first taxable year of the credit period. The first year of the Compliance Period is the first year in which the owner claimed credits. The first year must be either the year the building is placed in service or, at the owner’s election, the year following the placed in service year. All requirements of the Internal Revenue Code, Section 42, including the 1.42-5 monitoring regulations are in effect during the 15-year Compliance Period.

**Extended Use Period:** the period beginning on the last day in the Compliance Period in which such building is part of a qualified low-income housing project and ending on the date specified by OHCS in the EUA.

## **Post Year 15 Compliance**

Post 15-year compliance rules will be greatly simplified.

The owner agrees to:

1. maintain the applicable fraction by leasing units to households whose income at placement is 50% or 60% or less of the area median gross income, as adjusted for family size;
2. maintain the rent and income limit restrictions in accordance with the current Reservation and Extended Use Agreement;
3. lease, rent, or make available to the general public all units subject to the credit;
4. comply fully with the requirements of the Fair Housing Act;
5. not refuse to lease a unit to a Section 8 voucher holder solely because of the prospective tenant's status as a voucher holder;
6. maintain all units as suitable for occupancy;
7. certify tenants initially and on the anniversary of the move-in (for units subject to income qualification requirements);
8. continue to update utility allowances annually. Revised utility allowances must be implemented within 90 days of their published effective date; and
9. comply with other restrictions as required under the specific year's Qualified Allocation Plan (QAP) or representations made during the application process.

Revised tenant eligibility issues:

1. Tenant Income Certifications
  - a) Move-in certification
    - The initial income certification is still required. Income will be verified by third-party sources and calculated in a manner consistent with the determination of income as defined under Section 8 requirements.
  - b) Annual certifications
    - The Tenant Income Certification will still be required at each annual recertification. However, third-party verification of income will only be required at the first annual certification (in addition to the initial certification). Thereafter, verification of all income sources can be accomplished through self-certification from the tenant(s).
  - c) Changes in household composition
    - Any household composition change (not including birth or death) in the first six months of occupancy will require a new initial certification, and third-party verification to determine eligibility.
2. Student Status
  - Student status rules will no longer be applicable.

3. Unit Transfers

Unit transfers anywhere within a project (building to building) are allowed regardless of the household's income at the point of transfer.

4. Next Available Unit Rule

Projects will not be subject to the Next Available Unit Rule but will be required to maintain the unit set-aside agreed upon in the EUA.

**Monitoring - Post 15 Year Compliance**

The following is the revised monitoring procedure OHCS will follow during the Extended Use Period:

**Inspections:**

OHCS will continue to inspect and audit projects but at reduced frequency. Projects will be inspected and audited a minimum of every five years. Inspections and audits may be more frequent at the discretion of the assigned Compliance Officer. Depending on the size of the project and other factors, the number of units and files inspected will range from 5 – 10% each, or a minimum of 5 units and files. More units and files (over the 10%) may be inspected at the Compliance Officer's discretion.

**Annual Reporting:**

An Annual Owner's Certification of Continuing Program Compliance will be required. However, much of the language will be revised to reflect the end of the Credit Period and the shift in focus to the compliance under the provisions of the Declaration.

The Annual Summary Spreadsheet will also be required. However, this form will be revised to remove components no longer necessary during the Extended Use Period.

**Monitoring Charges**

Monitoring charges will be reduced from \$35 per unit per year to \$25 per unit per year. Invoices will continue to be sent to the Owner and Managing Agent of record at the end of the calendar year with a due date the following January.

OHCS reserves the right to adjust the monitoring charges due to changing circumstances.

## **Project-Based Subsidy Programs**

Inspections and monitoring charges will be waived for projects with project-based subsidy programs in effect. Ownership must notify OHCS of the type and duration of the subsidy program(s) for a written waiver of these requirements. Inspections and charges will resume if the subsidy program expires prior to the expiration of the terms of the Extended Use Agreement.

## **Transfer of Ownership or Ownership Interest**

A transfer agreement is required in the event of a transfer of ownership or ownership interest. Such agreement will put the new owner or partner on notice that it is subject to the terms of the Declaration and EUA, including all compliance restrictions and annual compliance monitoring.

### **Consequences of Noncompliance:**

*Owners will be given the same timeline for correction of noncompliance as during the initial Compliance Period (45 days from the date of the inspection and audit report). Extensions are available by request but, in no case, can exceed a total of six months (including the initial 45 day correction period). Uncorrected noncompliance may result in the following progressive actions:*

1. The status of owners, managing agents, and/or general partners will be designated as “not in good standing” with the agency. OHCS reserves the right to publish a list of “not in good standing” entities on our website in the future if deemed necessary.
2. OHCS may choose to enforce the Declaration and Extended Use Agreement through the courts.