

# Commonwealth of the Northern Mariana Islands

## Low-Income Housing Tax Credit Program 2019 and 2020 Qualified Allocation Plan

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### Low-Income Housing Tax Credit Program 2019 and 2020 Qualified Allocation Plan

#### I. INTRODUCTION

Created by the Tax Reform Act of 1986, The Low-Income Housing Tax Credit (“LIHTC”) Program is intended to encourage the construction or rehabilitation of low-income rental units. Section 42 of the Internal Revenue Code (“Section 42 IRC”) contains the regulations which govern the LIHTC Program which provides Federal tax credits to qualified project owners who agree to maintain all or a portion of a project’s units for low-income individuals or families.

Under the Commonwealth of the Northern Mariana Islands (“CNMI”), the Northern Marianas Housing Corporation (“NMHC”) has been designated as the agency responsible for the administration of the Federal Low-Income Housing Tax Credit Programs. In accordance with the Omnibus Spending Bill of 2000, Omnibus Budget Reconciliation Act of 1989 and the Budget Reconciliation Bill of 1990, NMHC developed this “Qualified Allocation Plan” (“QAP”) which sets forth:

1. The criteria to evaluate and allocate tax credits to projects which best meet the housing needs of the State; and
2. The procedure to monitor for compliance with the provisions of the LIHTC Program.

**This allocation plan shall be effective for reservations and awards of LIHTC for calendar year 2019 and 2020. The allocation plan is subject to amendment by the NMHC Board of Directors.**

#### II. APPLICATION PROCESS

Applications for the Low-Income Housing Tax Credit are available at NMHC’s office or by submitting a written request to NMHC at the address shown below.

Northern Marianas Housing Corporation  
LIHTC Program, c/o Corporate Director  
P.O. Box 500514  
Saipan, MP 96950

Applications for tax credits should be submitted to NMHC no later than the deadline specified in the application announcement. Upon receiving an application for tax credits, NMHC shall review the application to ensure that the application is complete and contains all required information. The Corporate Director shall have the right to defer the consideration of any application if, in his sole discretion, such deferral is deemed in the best interests of meeting housing needs.

The allocation plan will utilize a point system to rank projects based upon the evaluation criteria established. The ranking of projects, along with all other relevant data, will determine the priorities to be followed by NMHC in allocating tax credits to the projects under consideration. The scores derived from the point system will be a component of the overall evaluation, and not the sole determining factor for the awarding of tax credits. In addition to the scores derived, NMHC will review all relevant data required in the application. Projects selected under this allocation plan shall then be evaluated as to the minimum amount of tax credits required in order to make the project feasible.

Complete applications shall then be evaluated based upon the criteria established in accordance with the allocation plan to determine the project’s rank in relation to other projects in the evaluation. The scores derived from the point system are not the sole determining factor for the awarding of LIHTCs, but are only a component of the overall evaluation. The ranking of projects, along with all other relevant data, will determine the priorities to be followed by

NMHC in allocating tax credits to the projects under consideration. Projects receiving the highest ranking shall then be evaluated to determine the minimum amount of tax credits required to make the project feasible. The amount of tax credits reserved or allocated to a particular project will be limited to the amount NMHC, in its sole discretion, deems necessary to make the project feasible.

### III. SELECTION CRITERIA

1. **Minimum Thresholds** – In order to receive consideration for an allocation or award of Low Income Housing Tax Credits, applicants must meet the following Minimum Threshold requirements:
  - A. **Market Study**: A comprehensive Market Study of the housing needs of low-income individuals in the area to be served by the project by a disinterested party approved by the NMHC must be submitted as part of this application. The Market Study must be completed at the Owner's expense. Any application which fails to submit a Market Study or submits a Market Study dated over six (6) months from the time of application shall be returned to the applicant and will not receive further consideration. *Market Study requirements are specified in Appendix 1.*
  - B. **Site Control**: To receive consideration for an award of LIHTC, the applicant must have control of the site in a form acceptable to the NMHC. Evidence of site control shall be submitted with the application for Low Income Tax Credits. Site control shall be substantiated by providing evidence in the form of an executed lease or sale option agreement, fee simple deed, or any other documentation acceptable to the NMHC. Evidence of site control must be provided for all proposed sites.
  - C. **Capital Needs Assessment**: To ensure that the proposed rehabilitation of the project is adequate and that the property will have a useful life that exceeds the compliance and additional use periods (collectively the Extended Use Period). A capital needs assessment (CNA) of the property by a competent third party shall be submitted with the application. A CNA is a qualified professional's opinion of a property's current physical condition. It identifies deferred maintenance, physical needs and deficiencies, and material building code violations that affect the property's use, structural and mechanical integrity, and future physical and financial needs. The CNA shall identify any work that must be completed immediately to address health and safety issues, violation of Federal or State law, violation of local code, or any work necessary to ensure that the building can continue to operate as affordable housing.
  - D. **Developer Fee**: Developer Fee includes developer fee, developer overhead, management fee, consultant fee, etc. For the 9% (volume cap) LIHTC:
    1. New Construction – maximum developer fee of 15% of the total development costs (excluding developer fee).
    2. Acquisition/Rehabilitation – maximum developer fee of 10% of the acquisition costs and 15% of the rehabilitation costs (excluding developer fee).
2. **Selection Criteria Point System** – Each application will be evaluated and awarded points in accordance with the following criteria. In the event that only a single application is submitted, the applicant must earn a minimum passing score of 50 percent (50%) of the total points; if the applicant scores 5 points below the minimum passing score, the application will be brought to the NMHC Board of Directors for consideration. The NMHC Board of Directors has the right to reconsider applications proposing to develop projects in isolated areas or for applications that scored more than 5 points below the minimum passing score. Unless otherwise indicated, all references to low-income unit(s) or low-income rental unit(s) shall mean low-income housing tax credit unit(s).

	<b>CRITERIA</b>	<b>Points</b>
1.	Project will provide low-income units for a longer period than is required under Section 42 IRC.	0 - 10
2.	Project will provide a greater percentage of low-income units than required under Section 42 IRC.	1 - 10
3.	Project has the appropriate zoning or the applicant has secured the necessary exemptions/variances to construct the project as proposed.	0 or 7
4.	The applicant demonstrates that all low-income units will be made available to people holding valid Section 8 vouchers.	0 or 6
5.	The project will serve tenant populations of individuals with children and will provide three (3) bedroom units or larger for at least 60% of all low-income units in the project.	0 or 10
6.	Project will give preference to special tenant populations.	0 or 3
7.	The project is participating with a local tax-exempt organization and is sponsored by a qualified non-profit, tax-exempt organization as defined in Section 42 IRC.	0 or 1
8.	The ratio of total tax credits requested as a percentage of total project cost.	0 - 5
9.	The project will be receiving project-based rental assistance subsidies which would result in eligible tenants paying approximately 30% of their gross monthly income towards rent.	0 - 4
10.	Local Government Support.	0 - 5
11.	Developer will commit to offer the units to sale or lease at the end of the fifteen-year compliance period or any extended use period first to existing tenants.	0 or 10
12.	Project is located in a qualified census tract, the development of which contributes to a concerted community revitalization plan as determined by NMHC.	0 or 2
13.	Project location and market demand.	0 - 15
14.	Developer experience.	-8 - 10
15.	Overall project feasibility.	0 - 10
16.	Energy Efficiency and Green Building.	0 - 5
17.	Tinian and Rota Project Development	0 - 10

- Criterion 1 (0 – 10 Points):** Project will provide low-income units for a longer period than is required under Section 42 IRC. Applicants electing to commit to an additional use period beyond the 15-year LIHTC compliance period (collectively the Extended Use Period) will be awarded points based on the table below. By making this election, the applicant elects to waive its right to exercise a request for a qualified contract pursuant to Section 42(h)(6)(E)(i)(II). The elections will be recorded in the Restrictive Covenant Document. Points will be awarded based on the following:

<i>No additional use period</i>	<i>0 Points</i>
<i>15 to 19 years</i>	<i>6 Points</i>
<i>20 to 24 years</i>	<i>7 Points</i>
<i>25 to 29 years</i>	<i>8 Points</i>
<i>30 years or more</i>	<i>10 Points</i>

- Criterion 2 (1 – 10 Points):** Project will provide a greater percentage of low-income units than required under Section 42 IRC. With respect to the set-aside affordability, if a project provides:

<i>20% of the project to households earning less than 50% of AMGI, OR 40% of the project to households earning less than 60% of the AMGI</i>	<i>1 Point</i>
<i>40% of the project to households earning 50% or less of AMGI, OR 60% of the project to households earning 60% or less of AMGI</i>	<i>2 Points</i>
<i>60% of the project to households earning 50% or less of AMGI, OR 80% of the project to households earning 60% or less of AMGI</i>	<i>3 Points</i>
<i>100% of the project to households earning 60% or less of AMGI</i>	<i>10 Points</i>

- Criterion 3 (0 or 7 Points):** Project has the appropriate zoning or the applicant has secured the necessary exemptions/variances to construct the project as proposed. The applicant's readiness to proceed with the development of this project with respect to development approvals:

<i>The applicant has obtained all necessary zoning and entitlements for the property, including subdivision approvals and upon receipt of credits, is ready to proceed with the development of the project without any additional development approvals other than customary land disturbance and building permits.</i>	<i>7 Points</i>
<i>Project is not appropriately zoned and/or does not conform to State Land Use regulations or requires 201 G, variances, subdivision approval or any other exemption from any local or state land use restrictions.</i>	<i>0 Points</i>

- **Criterion 4 (0 or 6 Points):** The applicant demonstrates that all low-income units will be made available to people holding valid Section 8 vouchers.

<i>If the answer to the question is "NO"</i>	<i>0 Points</i>
<i>If the answer to the question is "YES" and the applicant is able to demonstrate that all low-income units will be available to people holding valid Section 8 vouchers.</i>	<i>6 Points</i>

- **Criterion 5 (0 or 10 Points):** The project will serve tenant populations of individuals with children and will provide three (3) bedroom units or larger for at least 60% of all low-income units in the project.

<i>If the answer to the question is "NO"</i>	<i>0 Points</i>
<i>If the answer to the question is "YES"</i>	<i>10 Points</i>

- **Criterion 6 (0 or 3 Points):** Project will commit to serve tenant populations with special housing needs (special needs groups are "persons for whom social problems, age, or physical or mental disabilities impair their ability to live independently and for whom such ability can be improved by more suitable housing conditions.") OR elder or elderly household tenant populations. *Applicants may receive points for electing to serve one of these tenant populations.*  
Projects may receive 3 points for this criterion if it commits to the following:

<i>The project will set-aside at least 20% of all units for tenant populations with special housing needs*</i>	<i>3 Points</i>
<i>The project will set-aside all units for elder or elderly household tenant populations</i>	<i>3 Points</i>

\* To receive consideration for this criterion, a) the project must commit to provide case management or services specific to this population or special facilities to accommodate the physically disabled and b) the Market Study shall specifically address the housing needs for the special needs group.

- **Criterion 7 (0 or 1 Point):** The project is participating with a local tax-exempt organization and is sponsored by a qualified non-profit, tax-exempt organization as defined in Section 42 IRC.

<i>If the answer to the question is "NO"</i>	<i>0 Points</i>
<i>If the answer to the question is "YES"</i>	<i>1 Point</i>

- **Criterion 8 (0 – 5 Points):** The ratio of total tax credits requested as a percentage of total project cost. If total federal tax credit requested (gross) as a percentage of total project cost is:

<i>Greater than 90% of total project cost</i>	<i>0 Points</i>
<i>81% through 90% of total project cost</i>	<i>1 Point</i>
<i>71% through 80% of total project cost</i>	<i>2 Points</i>
<i>51% through 60% of total project cost</i>	<i>3 Points</i>
<i>61% through 70% of total project cost</i>	<i>4 Points</i>
<i>50% or less of total project cost</i>	<i>5 Points</i>

- **Criterion 9 (0 – 4 Points):** The project will be receiving project-based rental assistance subsidies which would result in eligible tenants paying approximately 30% of their gross monthly income towards rent. Eligible programs shall include, but not be limited to, the Rural Development 515 Loan Program and HUD Section 8 project-based Rental Assistance Program.

<i>If the answer to the question is “NO”</i>	<i>0 Points</i>
<i>If the answer to the question is “YES”</i>	<i>1 – 4 Points*</i>

\* If the whole project has project-based subsidies then 4 points is awarded, if only a portion of a project has project based subsidies, then the scoring will be adjusted based upon the percentage of units subsidized. The percentage is derived as “Number of Subsidized Units/Tax credit and non-tax credit subsidized units,” provided they are developed simultaneously.

- **Criterion 10 (0 – 5 Points):** Local government support – The project will receive a below market loan, qualifying certificate, or grant from a State or local governmental agency other than NMHC, which in total amounts to ten percent (10%) or more of the total development cost.

<i>The project has not applied or does not intend to apply for a below market loan or grant from a government agency, or intends to apply, rely, or has applied for a qualifying certificate, or if the total amount applied for is less than 10% of total development costs.</i>	<i>0 Points*</i>
<i>The project intends to apply or has applied for a below market loan or grant from a government agency. (Documentation must be provided evidencing that an application for financing has been submitted.)</i>	<i>2 Points</i>
<i>Except for a qualifying certificate, the project has received a commitment (i.e. below market loan, grant) from a government agency. (A copy of a commitment letter or contractual agreement must be included in the application.)</i>	<i>5 Points</i>

\* The applicant must provide supporting documentation that the project can be completed without any form of local government support.

- **Criterion 11 (0 or 10 Points):** Developer will commit to offer the units to sale or lease at the end of the fifteen-year compliance period or any extended use period first to existing tenants who can qualify through currently available home ownership programs or other funding sources.

<i>If the answer to the question is “NO”</i>	<i>0 Points</i>
<i>If the answer to the question is “YES”</i>	<i>10 Points</i>

- **Criterion 12 (0 or 2 Points):** Project is located in a qualified census tract, the development of which contributes to a concerted community revitalization plan as determined by NMHC (i.e. site is located in an Enterprise Community, Empowerment Zone, or part of a County redevelopment plan).

<i>If the answer to the question is “NO”</i>	<i>0 Points</i>
<i>If the answer to the question is “YES”</i>	<i>2 Points</i>

To receive consideration for this criterion, the applicant must provide an explanation on how this project is in compliance with such plan and its benefit to the overall community. The applicant must provide a letter of interest or a binding agreement with the government agency administering the community revitalization plan.

- **Criterion 13 (0 – 15 Points):** Project location and market demand – Based on the strength of the comprehensive Market Study, points awarded will be based on NMHC’s evaluation of the following factors:

<i>Employment opportunities, schools, medical facilities located in the immediate vicinity of the project site</i>	<i>5 Points</i>
<i>Recreational facilities, shopping facilities, located in the immediate vicinity of the project site</i>	<i>2 Points</i>

<i>Documented/supported market demand</i>	<i>2 Points</i>
<i>Proposed rental rates are below market rents for the immediate surrounding area?</i>	<i>2 Points</i>
<i>Housing characteristics (e.g., design, density) appropriate for neighborhood</i>	<i>2 Points</i>
<i>Neighborhood conducive for senior or family use</i>	<i>2 Points</i>

- **Criterion 14 (-8 – 10 Points):** Developer experience – The points awarded will be based on NMHC’s evaluation of the following factors:

<i>Development Team has successfully met program objectives on past proposals which include LIHTC developments in other states or jurisdictions</i>	<i>8 Points</i>
<i>Development Team has failed to meet program objectives on past proposals, which include LIHTC developments in other states or jurisdictions, or in any NMHC programs</i>	<i>- 8 Points</i>
<i>Development Team has successfully completed similar projects</i>	<i>2 Points</i>

- **Criterion 15 (0 – 15 Points):** Overall project feasibility – The points awarded will be based on NMHC’s evaluation of the following factors that could impact the overall project feasibility:

<i>Documentation of development costs</i>	<i>2 Points</i>
<i>Documentation of operating costs</i>	<i>2 Points</i>
<i>Debt Service Coverage Ratio of &gt;1.15x</i>	<i>2 Points</i>
<i>Operating reserves equal to 3 months of monthly operating expenses</i>	<i>2 Points</i>
<i>Financial Commitments in place</i>	<i>7 Points</i>

- **Criterion 16 (0 – 5 Points):** Energy Efficiency and Green Building – Projects electing to incorporate energy efficient practices that promote resource conservation will be awarded points. Projects will be awarded points based on the following:

<i>Project will not incorporate energy efficient practices.</i>	<i>0 Points</i>
<i>Project will elect to include one (1) General Energy Efficiency or Green Building Criteria and one (1) Energy Star Criteria from the list below.</i>	<i>1 Point</i>
<i>Project will elect to include two (2) General Energy Efficiency or Green Building Criteria and two (2) Energy Star Criteria from the list below.</i>	<i>2 Points</i>
<i>Project will elect to include three (3) General Energy Efficiency or Green Building Criteria and three (3) Energy Star Criteria from the list below.</i>	<i>3 Points</i>
<i>Project will elect to include four (4) General Energy Efficiency or Green Building Criteria and four (4) Energy Star Criteria from the list below.</i>	<i>4 Points</i>
<i>Project will elect to include five (5) or more General Energy Efficiency or Green Building Criteria and five (5) or more Energy Star Criteria from the list below.</i>	<i>5 Points</i>

Energy Star Criteria:

- Installation of solar thermal, tankless, or tank type water heaters that meet ENERGY STAR standards;
- Installation of five or more ENERGY STAR qualified light fixtures, ceiling fans equipped with lighting fixtures, and/or ventilation fans in each unit;
- Installation of photosensors or timers on all outdoor lighting and ENERGY STAR or high efficiency commercial grade lighting fixtures (T8) in all common areas;
- Installation of ENERGY STAR appliances including refrigerators, dishwashers, and clothes washers (horizontal axis) in each unit;
- Reducing heat island effects by using ENERGY STAR low emissive roofing products for at least 50% of the roof area; or a combination of high-albedo and vegetated roof covering 75% of the roof area. Reduce asphalt surface areas and use low emissive pavement coatings and materials for at least 25% of paved surfaces;



- Installation of an ENERGY STAR qualified HVAC (Heating Ventilation Air Conditioning) System.

General Energy Efficiency and Green Building Criteria:

- Installation of water conserving plumbing fixtures: High Efficiency Toilets (less than 1.28 gallons per flush), showerheads with rated flow less than 1.75 gallons per minute (gpm), kitchen aerators with rated flow less than 1.5 gpm, and bathroom aerators with rated flow less than 1.0 gpm;
- Using flooring and exterior building materials that do not contain poly-vinyl chloride (PVC) such as brick or cement fiber siding over vinyl siding and concrete, bamboo, cork, or linoleum over vinyl flooring;
- Provide an easily accessible area dedicated to recycling (at a minimum) newspaper, corrugated cardboard, glass bottles and jars, aluminum cans, and plastic containers (#1 & #2);
- Utilizing low-VOC paints, primers, organic compound sealers, and adhesives, and composite or engineered wood specified to be free of added urea formaldehyde;
- All carpet must be Green Label or Green Label Plus certified carpet approved by the Carpet and Rug Institute;
- Implementing renewable energy technologies such as photovoltaics, geo-thermal heat pumps, wind turbines, etc. to provide at least 5% of the property’s annual energy consumption;
- Use products manufactured, harvested, and assembled in the CNMI for 10% of the project based on cost to reduce transportation impact and improve local markets;
- Using at least 25% reclaimed or recycled content materials such as brick, framing lumber, recycled concrete and aggregates, recycled gypsum board, and fly ash concrete;
- Minimizing irrigation needs by selecting native trees and plants that are appropriate to the site’s soils and microclimate. If irrigation is necessary, use an irrigation system that will deliver at least 50% non-potable water (recycled water, gray water, or collected rainwater);
- Locating projects within 1 mile of at least four community and/or retail facilities (grocery store, drug store, parks, schools, libraries, cultural centers, and other public facilities used by the residents). Include sidewalks or suitable pathways linking the development to public spaces.
- Apply for other green certification. Type of certification needs to be identified when the application is submitted.
- Installation of insulation that exceeds the CNMI Building Code in order to provide energy efficiency over the extended period of the projected life of the project.
- Develop and implement a construction waste management plan to reduce the amount of material sent to the landfill by at least 25%.
- Project plans and specifications call for labeling of all storm drains to clearly indicate where the drain leads.
- For properties built before 1978, use lead-safe work practices during renovation, remodeling, painting, and demolition.
- Install a ventilation system for the building providing adequate fresh air per ASHRAE (American Society of Heating, Refrigerating, and Air Conditioning Engineers) standards.

Upon completion of the project, a certification from a third party, architect, or engineer verifying the green building practices listed above have been used to construct or rehabilitate the building shall be submitted. Failure to provide the certification may result in forfeiture of the good faith deposit.

- **Criterion 17 (0 – 10 Points):** Tinian and Rota Project Development – Applicants electing to develop projects on the island of Tinian or Rota will be awarded points based on the following:

<i>Applicant will not develop a project on Tinian or Rota.</i>	<i>0 Points</i>
<i>Applicant will elect to develop a project on the island of Tinian or Rota.</i>	<i>10 Points</i>

#### IV. RIGHTS OF NMHC

1. NMHC reserves the right to disapprove any application or project for any tax credit reservation or allocation, regardless of ranking under the criteria and point system as contained in section III of this QAP. The Corporate Director or his designated representative shall have the authority to defer consideration of any application if, in his sole discretion, such deferral is deemed in the best interest of meeting housing needs and NMHC's. NMHC may allow amendments to the application.
2. NMHC reserves the right, in its sole discretion, to:
  - A. Hold back a portion of the annual state and federal housing credit ceiling for use during later reservation cycles;
  - B. Carryover a portion of the current year's housing credit ceiling for allocation to a project which has not yet been placed in service; and
  - C. Under certain conditions, issue a reservation for up to seventy-five (75%) percent of the next year's housing credit ceiling;
  - D. Allow amendments to an approved application.
3. NMHC is required under the I.R.C. of 1986, as amended, to allocate the minimum amount of tax credits required to make a project feasible. The determination of the amount of tax credits to be reserved or allocated to a project shall be made solely at the discretion of NMHC. NMHC may, at the time of issuance of the IRS Form(s) 8609 for the project, decrease the amount of tax credits allocated to a project based on the actual cost and financing of the project.
4. NMHC may, at its sole discretion under certain circumstances, conduct a special round after the final scheduled round for a year for projects:
  - A. Where the applicant's tax counsel has attested to an itemization of how the ten percent (10%) test prescribed by Code Section 42(h)(1)(E) will be met;
  - B. Which have no deficient application items; and
  - C. For which all exhibits have been submitted ("Year-End Round"). Year-End Round projects will receive a Carryover Allocation, not a reservation of LIHTCs, which may contain certain conditions and time periods for satisfying them. The circumstances for conducting a Year-End Round are:
    1. Availability of LIHTCs; and
    2. Potential loss of LIHTCs to the national pool.

When a Year-End Round is being conducted, applicants need to satisfy the above requirements in order to receive a Carryover Allocation; and LIHTCs will be processed on a first-come first-served basis and allocated to the extent available and to the extent applications can be processed.
5. NMHC in no way represents or warrants to any interested party which may include, but is not limited to, any developer, project owner, investor or lender that the project is, in fact, feasible or viable.
6. No member, officer, agent, attorney or employee shall be personally liable concerning any matters arising out of, or in relation to, the reservation or allocation of the Low-Income Housing Tax Credit.

## V. COMPLIANCE MONITORING PLAN

1. **Summary:** NMHC shall monitor compliance with all applicable Federal Program requirements for the period a project is committed to providing low-income rental units. NMHC will require:
  - A. That all qualified tenants of a project be certified upon occupancy and be re-certified annually to ensure compliance.
  - B. That all projects:
    1. Maintain copies of the income certification for each tenant on forms approved by NMHC;
    2. Maintain records regarding:
      - a. Number of rental units (including number of bedrooms and size of square footage of each bedroom);
      - b. Percentage of rental units that are low-income units;
      - c. Rent charged on each rental unit including utility allowances;
      - d. Number of occupants in each low-income unit for those buildings receiving tax credits prior to 1990;
      - e. Documentation regarding vacancies in the building;
      - f. Eligible and qualified basis of the building at the end of the first year of the credit period, and at the end of each year until required set-asides are met; and
      - g. Character and use of the nonresidential portion of the building that is included in the building's eligible basis, all in accordance with the rules published by the Internal Revenue Service.

NMHC may perform an audit annually but at a minimum, once every three years, and shall have access to all books and records upon notice to the project owner. Annually, owners of LIHTC projects will be required to certify to NMHC that for the previous year:

- The minimum set-aside requirement was met;
- There was no change in the applicable fraction, or an explanation if there was a change;
- Appropriate income certifications and documentation have been received for each low-income tenant;
- Each low-income unit was rent-restricted in accordance with Section 42 IRC;
- All units were for use by the general public and used on a no transient basis (except for transitional housing for the homeless as provided for in Section 42 IRC);
- Each building was suitable for occupancy, taking into account local health, safety and building codes;

- There was no change in the eligible basis in the project, or an explanation if there was a change;
- All tenant facilities included in the eligible basis were provided on a comparable basis without charge;
- Rentals of vacancies were done in accordance with Section 42 IRC;
- Rentals of units were done in accordance with Section 42 IRC if any tenant's income increased above the limit allowed Section 42 IRC; and
- A Restrictive Covenant document was in effect for the project, for those buildings receiving credits after 1989, all in accordance with the rules published by the Internal Revenue Service.

In addition to the above criteria, NMHC reserves the right at any time to take any action it deems appropriate if it becomes aware of non-compliance and/or violations under the LIHTC Program. As evidence of such finding of non-compliance and/or violation, NMHC may:

- Conduct and rely upon its own investigations;
- Rely upon any order of a court with jurisdiction;
- Rely upon notice of such a finding from any federal or state agency with investigative or regulatory jurisdiction regarding the subject matter (i.e. IRS, DOJ, HUD, CNMI Office of the Attorney General); or
- Make a determination based upon the failure to report or affirmatively disclose information to NMHC.

If NMHC becomes aware of non-compliance, the Internal Revenue Service shall be notified in accordance with the rules published by the Internal Revenue Service. Please consult with your tax attorney and/or LIHTC consultant regarding Internal Revenue Code regulations. Owners are responsible for keeping abreast of current Program requirements. The guidelines outlined below pertain to projects allocated Federal and State Low Income-Housing Tax Credits in the CNMI.

## 2. Compliance

- A. Owner/Manager Training: Owners, managing agents, and on-site managers should attend or document that they have recently attended training on management and compliance prior to leasing any units, but no later than receipt of IRS Form 8609, which certifies an allocation of tax credits. Training may be required following significant or repeated noncompliance events. At minimum, such training should cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, next available unit procedures and unit vacancy rules, agency reporting requirements, record retention requirements, and site visits.
- B. Set-Aside: The project must comply with the low-income set-aside requirements of Section 42 IRC as chosen by the owner at the time of receiving the credits. The minimum requirements are either:
  1. Twenty percent (20%) or more of the units are occupied by tenants having a household income of fifty percent (50%) or less of the area median gross income (the "20-50 requirement"); or

2. Forty percent (40%) or more of the units in the project are occupied by tenants having a household income of sixty percent (60%) or less of the area median gross income (the “40-60 requirement”); or
3. Election of income averaging for new LIHTC developments where LIHTC Qualified Units (Units) may serve households earning up to 80% of the Area Median Income (AMI) so long as the average income limit of the Qualified Units is 60% or less of AMI. Designated income levels for the Qualified Units may be set at 10% increments between 20% and 80% of AMI. See Appendix 2 for further guidance.

Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937, as directed by the Internal Revenue Code. Area median incomes are determined annually by the U.S. Department of Housing & Urban Development (HUD), and are available from NMHC.

- C. *Rent*: Units in the project must be rent-restricted to either thirty percent (30%) of the median income adjusted for family size for the area in which the project is located or rent-restricted to thirty percent (30%) of the imputed income limitations based on unit size. This rent restriction must be maintained throughout the Term of the Compliance and Extended-use period. See “4. Rent Restrictions” in this section for further information.
- D. *Term of Compliance*: Projects must comply with the eligibility requirements for the initial fifteen (15) year period (“compliance period”).
- E. *Annual Certification and Record Retention*: These and other compliance requirements as listed in Section 1. Summary must be certified annually by the owner through the submission of the Annual Report. The Annual Report includes the Owner’s Certificate of Continuing Program Compliance and shall be submitted by February 1 of each year throughout the compliance and extended-use period. The Annual Report and the supporting documentation verifying the information on the Annual Report must be kept for a minimum of six (6) 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 (6) 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, in accordance with published IRS guidelines.
- F. *IRS Form 8609*: The owner shall complete Part II of IRS Form 8609 and submit with subsequent Annual Report.
- G. *Qualified Basis Tracking Sheet (QBTS)*: This form shall be submitted annually until the required set-asides are established. Documents will provide information on original tenants qualifying each building for tax credits minimum set-asides, and other set-asides.
- H. *Status Reports*: This report is to be submitted annually by owners in such format as required by NMHC or its Authorized Delegate to document and track the continuous compliance of tax credit units. The documents report data that tenants are income eligible at move-in, that occupants of LIHTC units are re-certified at least on an annual basis and that the unit rents are restricted. Documentation will also indicate compliance with the vacant unit rule and 140% rule. The tracking of tax credit units substantiates the maintenance, increase or reduction of each BIN’s qualified basis.

### 3. Qualifying Households

- A. *Qualifying Households*: Applicants for low-income units should be advised early in their initial visit to the project that there are maximum income limits, which apply for these units. Management should explain to the tenants that the anticipated income of all persons expecting

to occupy the unit must be verified and included on a Tenant Income Certification (TIC) prior to occupancy, and re-certified on an annual basis. Applicants should be informed of other Internal Revenue Services requirements such as the Student Rule and Recertifications.

- B. Unborn Children: In accordance with the HUD Handbook 4350.3, the owner shall include unborn children in determining household size and applicable income limits. If permitted by state laws, the owner shall require documentation of pregnancy in such circumstances.
- C. Student Households: In accordance with the Internal Revenue Code, a household comprised entirely of full-time students may not be counted as a qualified household, unless the household meets at least one exception. Refer to the Internal Revenue Code for additional guidelines on the exceptions. Owner shall utilize a lease provision requiring tenants to notify the managing agent of any change in student status.
- D. Calculating Anticipated Tenant Income: The owner shall qualify tenants by calculating household income using the gross income the household anticipates it will receive in the 12-month period following the effective date of the income verification or Recertification. Anticipated income should be documented in the tenant file by third party verification whenever possible, or by an acceptable alternate method of verification with documentation as to why third party verification was not available. Owner shall use current circumstances to project income, unless verification forms or other verifiable documentation indicate that an imminent change will occur. Owner shall refer to HUD Handbook 4350.3 for guidance on the proper calculation and verification of income and assets per IRC regulations.
- E. Certification: Upon acceptance of an applicant to the project, a TIC must be completed for the applicant and certified to by the applicant and the owner. The form is a legal document which, when fully executed, qualifies the applicants to live in the set-aside units in the project. The TIC must be executed along with the lease prior to move-in. No one may live in a unit in the project unless he/she is certified and under lease.

The original copy of the executed TIC form is to be retained in the applicant's file. The TIC and the supporting documentation verifying the TIC must be kept for a minimum of six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 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, in accordance with published IRS guidelines.

- F. Recertification:
  - i. For projects with 100% set-aside, NMHC requires that all tenants be certified upon occupancy, as well as undergo an annual recertification, but will not be required for further recertification provided the owner satisfactorily fulfills all recertification requirements. Owners who fail to satisfy all recertification requirements are subject to performing additional annual recertifications.
  - ii. For projects with less than 100% set-aside, NMHC must ensure each unit is complying with the LIHTC income restrictions and therefore requires:
    - a. The owner to annually recertify each tenant's income and household composition; and
    - b. Each tenant is to report certain changes in income and household composition which occur between regularly scheduled recertifications.

If the income of the tenants in a unit who have been previously verified increases above 140 percent of the applicable income limitation, the unit may continue to be counted as a

low-income unit as long as the next available unit of comparable or smaller size is occupied by a qualified low-income tenant, and the rent continues to be restricted for the initial unit.

Each tenant's annual recertification is to be completed within one year of last recertification. The request for recertification shall be made between 60 and 90 days before the effective date, and it must clearly state that the tenant has ten (10) calendar days in which to contact the owner to begin recertification processing. The notice must also state the days and hours available for the interview, the information the tenant should bring to the interview, and how and whom to contact to schedule the interview. Upon recertification of the tenant's income, the owner shall complete a new TIC, which shall be certified to by the owner or owner's designee.

G. Past-Due Recertification: A recertification is considered past due if the TIC for the tenant is not certified by tenant and owner within twelve months of the last recertification.

4. Rent Restrictions: Projects receiving Low-Income Housing Tax Credits after January 1, 1990 must comply with the following procedures:

A. Units in the project must be rent-restricted to thirty percent (30%) of the imputed income limitations for each unit, based upon HUD area median incomes and size of units. Rents are imputed by bedroom size in the following manner:

1. A unit which does not have a separate bedroom – one (1) individual; and
2. A unit with one (1) or more separate bedrooms – 1.5 individuals per bedroom.

B. Gross rent does not include any payment for various rental assistance programs and supportive service assistance as outlined in Section 42 IRC. Gross rent must include any allowance for utilities.

HUD publishes the area median incomes for each state annually. Updated income limits must be implemented pursuant to IRS Revenue Ruling 94-57, "Taxpayers may rely on a list of income limits released by HUD until 45 days after HUD releases a new list of income limits, or until HUD's effective date for the new list, whichever is later." Rents may be increased accordingly as the area median income increases. If the income of the tenants in a unit who have been previously verified increases above 140 percent of the applicable income limitation, the unit may continue to be counted as a low-income unit as long as the next unit of comparable or smaller size is occupied by a qualified low-income tenant, and the rent continues to be restricted for the initial unit.

5. Eviction of Tenant: Once an eligible tenant has been certified and admitted to the project, the tenant may not be displaced solely due to an increase in the tenant's household income beyond the restricted limit.

6. Audits: The project may be subject to a management audit by NMHC or its Authorized Delegate annually but, at a minimum, once every three years. Notification of an audit shall be given to the owner at least thirty (30) days prior to such audit. The results of the management audit and the recommendations for corrective action to protect and maintain the project shall be transmitted to the owner within thirty (30) days following the completion of the audit.

The purpose of the audit will be to conduct a physical inspection of the building and/or project, and, for at least twenty percent (20%) of the project's low-income units, to inspect the units and review the low-income certifications, documentation supporting the certifications, and rent records for the tenants in those units. The audit may also consist of a review of first year tenant records, a review of the documentation supporting the Annual Report, and any other documentation necessary for NMHC to make a determination as to whether the project is not in compliance with Section 42 IRC.

When conducting tenant file reviews, NMHC's and its Authorized Delegate's reviews shall include, but not be limited to:

- A. Completed rental application, including certification of assets and disposal of assets, if applicable;
- B. Tenant income certification completed for move-in and current year, including all required signatures and dates;
- C. Income verification(s) completed and documented;
- D. Assets verified in accordance with IRC regulations;
- E. Student eligibility documentation;
- F. Lease and lease addendums completed at move-in;
- G. Utility allowance on file;
- H. Review of first year tenant records which qualified the project initially for tax credits.

The owner shall have a period of thirty (30) days in which to respond to the findings of the management audit. NMHC shall review the owner's response to determine the extent to which the issues raised in the management audit letter are addressed. Findings, whether corrected or not, will be reported to the IRS. *See the following Section 10 for information on notification to the IRS of any non-compliance found in the management audit.*

7. **Rural Housing Service (RHS) and Tax-Exempt Bond Issue Projects:** In accordance with the published IRS guidelines on compliance monitoring, an exception may be granted to RHS projects under its section 515 program and buildings or projects of which fifty percent (50%) or more of the aggregate basis is financed with the proceeds of tax-exempt bonds.

The IRC regulations allow for exception of a building from the inspection requirement if the building is financed by RHS under the section 515 program, the RHS inspects the building [under 7 CFR part 1930(C)], and the RHS and the allocating agency enter into a memorandum of understanding, or other similar arrangement, under which the RHS agrees to notify the allocating agency of the inspection results. Irrespective of the physical inspection standard selected by the allocating agency, a low-income housing project under Section 42 IRC must continue to satisfy local health, safety and building codes. A memorandum of understanding has not been executed between NMHC and RHS.

Annual Reports, QBTS, Compliance Monitoring Status Reports and other reports are still required of RHS projects. Although NMHC has allowed the use of the RD 1944-8, the form does not determine eligibility for specific LIHTC requirements. Owners need to determine whether the TIC will be used or a worksheet will be attached to RD 1944-8 to determine eligibility under the IRC. Management audits will still be conducted as indicated herein.

An owner who for some reason is not able to make any of the required certifications stated on the Annual Report or other requirements must inform the Agency immediately of such inability, as well as explain the reason for said inability.

8. **Reporting Requirements:**

- A. The LIHTC Annual Report must be submitted annually by February 1 of each year throughout the compliance and extended-use period.



- B. Part II of the IRS Form 8609 must be completed by the owner and submitted with the initial Annual Report.
  - C. Qualified Basis Tracking Sheets (QBTS) are submitted, at a minimum annually, with the LIHTC Annual Report until all set-asides are established.
  - D. Status Reports are submitted annually by the owners with the Annual Report to document and track the continuance compliance of tax credit units throughout the compliance and extended-use period.
  - E. These forms must be sent in to NMHC or its Authorized Delegate at the address shown in Section II. The Certification of Eligibility and LIHTC forms listed above are available from NMHC. Additionally, NMHC has data regarding HUD area median incomes, maximum rental rates, income verification information and third party verification forms.
9. **Fees**: NMHC reserves the right to adjust the fees annually due to changing circumstances. ***All fees are non-refundable*** and shall be paid via Cashier's Check and made payable to The Northern Marianas Housing Corporation. The following fees are associated with the LIHTC Program:
- A. **Application Fee** – An Application Fee of \$2,500 per application shall be payable at the time of submission of the application.
  - B. **Good Faith Deposit** – A good faith deposit of five percent (5%) of the first year's federal tax credit reservation shall be payable at the time the executed binding agreement between the tax credit recipient and its investor is finalized and submitted to the NMHC but no later than the date of the 10% test. Upon allocation and issuance of the IRS Form 8609, 75 percent (75%) of the good faith deposit shall be retained by the NMHC as an administrative fee. The remainder of the good faith deposit shall be refunded to the applicant. However, if a project is cancelled within two years from approval, the 25 percent (25%) good faith deposit shall be retained by NMHC. Failure by the owner to meet any of the elections made in the scoring criteria at the time of application will result in the retention of the entire good faith deposit by the NMHC.
  - C. **Compliance Monitoring Fee** – A compliance monitoring fee of up to \$200 per unit for all units within each project shall be charged annually for administrative expenses. This fee shall be submitted with the LIHTC Annual Report for each year of the compliance/extended-use period. NMHC reserves the right to adjust fees due to changing circumstances annually each January 1. It will be the responsibility of NMHC to inform the owner of any changes in the annual compliance fee prior to the submission of fees. The compliance monitoring fee will be effective as of the Placed-in-Service date for the first building.
  - D. **Qualified Contract Processing Fee** – A qualified contract fee of \$150.00 per unit for all units.
  - E. **Reallocation Processing Fee** – A reallocation processing fee of \$500.00 shall be payable at the time of submission of the written request.
  - F. **Transfer of Credit Fee** – Any transfer or sell of Credits to another party shall result in the payment to NMHC of fifty percent (50%) of the moneys received from such transaction.
10. **Reallocation of Tax Credits**: Requests for the reallocation of tax credits must include the submission of a valid reason(s) for the request. Moreover, reallocation of tax credits will be limited to a two (2) year period; additional requests may result in a cancelation of tax credits for a project.
11. **Non-Compliance Penalties**: The penalty for non-compliance with these procedures is the potential recapture of the credits awarded and interest on the amount recaptured. The Internal Revenue Service shall determine penalties for non-compliance.

Upon determination by NMHC of non-compliance with the LIHTC Program, the owner shall be notified and given thirty (30) days to correct any discovered violations. In accordance with the Internal Revenue Service's published guidelines on compliance monitoring, NMHC will be required to notify the IRS within forty-five (45) days after the end of the thirty-day correction period, whether or not the non-compliance is corrected. NMHC will be given the opportunity on the IRS form to indicate whether the owner has corrected the non-compliance. NMHC may extend the correction period, up to a total of six (6) months, if it is determined by NMHC that good cause exists for granting such an extension. In such case, the IRS will not be notified until the end of the extended correction period.

12. **Additional Use Period:** NMHC is no longer required to report instances of non-compliance to the IRS after the initial 15-year compliance period of the Extended Use Period ("Additional Use Period"). The "AU Compliance Policy" during the Additional Use Period will concentrate on enforcing the requirements of the LIHTC program through the term of the Declaration of Restrictive Covenants for Low Income Housing Credit recorded on the property. The AU Compliance Policy is largely based on the procedures of the initial compliance period. Unless noted below, the policy and procedure for compliance during the initial compliance period shall continue to apply to the additional use period.

- A. **Effective Date:** The AU Compliance Policy shall be effective on the first day after the expiration of the initial 15-year compliance period for the last building placed in service in the project. Generally, the additional use compliance period will begin on January 1 of the year after the expiration of the initial 15-year compliance period of the last building placed in service and be in effect until the end of the additional use period.
- B. **Income and Rent Set Aside:** Owners are subject to the Section 42 occupancy and rent restrictions required in the Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits.
- C. **Student Households:** The IRC student rule no longer applies during the additional use period. However, a modified student eligibility requirement will be enforced to ensure that properties in the additional use period are not used as dormitory housing. During the additional use period, a household comprised entirely of full time students will qualify as long as at least one member of the household is an independent student or is a student in grades Kindergarten through 12 (including home schooled minors studying course material within these grades). An independent student is defined as one who is not claimed as a dependent on his/her parent's tax return (proof required).
- D. **Available Unit Rule / 140% Rule:** For projects which include market rate units, the Available Unit Rule and the 140% Rule do not apply during the additional use period. The percentage of tax credit units as specified in the Declaration of Restrictive Covenants for Low Income Housing Credits must be maintained throughout the additional use period.
- E. **Certification and Recertification:** Certification of tenants at the time of move-in shall be required during the additional use period according to the same procedure as the compliance period. Recertification of tenants will be required during the additional use period. However, if any adults are added to the household, then the household must be re-certified.
- F. **Unit Transfers:** During the additional use period, unit transfers are allowed without a new income qualification. Documentation of all unit transfers that occur shall be submitted as part of the Reporting Requirements.
- G. **Reporting Requirements:**
  - 1. The LIHTC Annual Report must be submitted annually by February 1 of each year throughout the additional-use period.

2. Status Reports are submitted annually by owners with the Annual Report to document and track the continuing compliance of tax credit units throughout the additional-use period.
- H. *Site Audits*: Commencing within three years after the expiration of the Compliance Period, site audits for projects may be conducted at least once every five years. Projects that have substantial outstanding non-compliance beyond the correction period based on the findings of the most recent site audit may be subject to more frequent site audits.
  - I. *Owner Inspection*: Owners shall conduct an annual physical inspection of each unit and common areas in the project.
  - J. *Correction Period and Non-compliance Penalties*: Upon determination by NMHC of non-compliance with the LIHTC Program during the additional use period, the owner shall be notified and given thirty (30) days to correct any discovered violations. NMHC may extend the correction period on a case-by-case basis, up to a total of six (6) months, if it is determined by NMHC that good cause exists for granting such an extension. Owners may request NMHC to review all outstanding non-compliance issues for a property once per calendar year after the initial correction period.

Any owner and constituent entities involved in management and ownership of a project with an unresolved finding of non-compliance beyond the initial correction period may be deemed to be *Not in Good Standing* by NMHC. Owners must clear all outstanding non-compliance issues to be deemed in *Good Standing* with NMHC.

## VI. QUALIFIED CONTRACTS

The Omnibus Reconciliation Act of 1989 required that all properties receiving an allocation of Housing Credits after January 1, 1990 are subject to an additional use period that extended the minimum affordability period of credit properties from 15 to 30 years. The 1989 Act also provided an option for owners to present a Qualified Contract (“QC”) for the acquisition of the property by a prospective buyer that agrees to purchase the property for the “qualified contract price”. If the state agency is not able to find a buyer to purchase the building at the qualified contract price, the additional use period is terminated.

Owners that elected to waive their option to request a Qualified Contract are not eligible. After the last day of the fourteenth year of the compliance period of the last building placed in service or the last day of the last year of a multiple year allocation, an eligible owner of the project utilizing federal LIHTCs may request a QC.

1. *Qualified Contract Request*: The legal owner must first submit a written request to the NMHC Corporate Director for consideration to present a Qualified Contract Request. The QC Request must also include a copy of the First year 8609s showing Part II completed for all buildings placed in service. After receiving the QC Request, NMHC shall conduct a review to determine the eligibility of an owner to submit an Inquiry, by confirming the following:
  - A. The original owner did not waive its right to request a QC during the allocation of the tax credits;
  - B. The tax credit property meets the basic physical compliance standards that are necessary to claim credits;
  - C. The owner has secured waivers of any purchase option and right of first refusal connected to the property;
  - D. The project and owners are in compliance and all programmatic requirements and are in good standing with NMHC.

If NMHC, after the review of the QC Request, determines the Owner is not eligible to submit a Qualified Contract Request Application, the Owner will be notified in writing. The owner must correct any deficiencies noted in the recent compliance monitoring before submitting a QC Request.

2. **Qualified Contract Request Application:** The Owner must file a complete Qualified Contract Request Application (“QC Application”) with NMHC on such form(s) as the Corporate Director may require from time to time as prescribed. The QC Application includes any documents and any additional information as may be requested by NMHC in order to comply with the Internal Revenue Code §42(h)(6)(F).

The QC Application shall include the Owner’s proposed QC price. The QC Application shall include a report calculating the QC price prepared by an independent certified public accountant (“QC Report”). The QC Report will list all due diligence reviewed and provide a detailed calculation of the QC price. The QC Report will include an opinion and certification that the QC price was calculated in accordance with the Internal Revenue Code §42(h)(6)(F). The certified public accountant will provide a reliance letter with regard to the report and certification of QC price in the favor of NMHC.

A. The owner will submit the following documents as part of its Application:

1. QC Report;
2. QC processing fee of \$150 per unit for all units;
3. Copies of all annual partnership tax returns;
4. Copies of annual audited project financial statement for all years;
5. Copies of loan documents for all secured debt during the compliance period;
6. Copies of partnership agreement (original, current, and all interim amendments);
7. Current title report (no more than 60 days from the date of QC Application);
8. A physical needs assessment for the entire project (no more than 60 days from the date of QC Application);
9. An appraisal prepared by a qualified third party appraiser for the entire project (no more than 60 days from the date of QC Application);
10. A Phase I environmental (no more than 60 days from the date of QC Application); and
11. Any other documents, certifications, application forms or agreements required by the NMHC.

B. The Owner must make the following documents available to interested buyers such that the buyers may conduct their due diligence:

1. Copies of annual audited project financial statement for all years;
2. Copies of loan documents for all secured debt during the compliance period;
3. Copies of partnership agreement (original, current, and all interim amendments);
4. Current title report (no more than 60 days old from the date of QC Application);
5. A physical needs assessment for the entire project (no more than 60 days from the date of QC Application);
6. An appraisal prepared by a qualified third party appraiser for the entire project (no more than 60 days from the QC Application);
7. A Phase I environmental report (no more than 60 days from the QC Application); and
8. Other relevant documents.

3. **Other Terms:**

A. NMHC may procure a third party contractor to provide services related to the valuation, review, or inspection of the property. Owners are responsible for any costs associated with contracting and procuring the third party providers.

- B. NMHC may reject a QC Application if the Owner does not provide the proper documentation, information on the required forms, or pay for the items listed below.
- C. The 1-year period does not start until the Owner submits a complete QC Application with all required documents to the satisfaction of NMHC.
- D. The Owner will agree to release the documents listed above to interested parties. Copies of such documents will be the responsibility of the owner.
- E. The Owner also agrees to allow NMHC to advertise the property and the Qualified Contract price. Such advertising may include but is not limited to posting on the NMHC website, marketing through an agent, broker, or consultant and mailings to interested buyers.
- F. NMHC will not bind the Owner to submit a request and will not start the one-year period defined in §42(h)(6)(I) until NMHC receives a complete QC Application.
- G. Owners may choose to cancel the QC Application at anytime during this process. ***However, the owner will only be able to request a QC once during the entire additional use period of the project. Withdrawing the application will count as the only time an owner can request a QC Application.***
- H. Under IRC §42(h)(6)(E)(i)(II), NMHC's only obligation is to "present" to the Owner a bona fide contract signed by a prospective buyer to acquire the Owner's project for the QC price (the "Contract"). When NMHC presents the Contract to the Owner, regardless of when or if the Contract is fulfilled, the possibility of terminating the additional use period is removed and the project remains bound to the additional use restrictions, and shall not terminate, the additional use agreement.
- I. The buyer shall submit a form of Qualified Contract to the Owner that clearly states the intent to purchase the property for the Qualified Contract price. A copy of the Qualified Contract shall be forwarded to NMHC by the buyer or the Owner. The Owner and the buyer are free to negotiate different transaction terms.
- J. In keeping with the purpose of IRC §42, NMHC will resolve any case of doubt or interpretation in determining the QC price, both with regard to the overall process and particular projects, in favor of the lower QC price.
- K. Please note that the IRS may clarify its regulations regarding the treatment of certain costs and valuations in calculating the QC price. The IRS regulations will be used upon publication of its rules with regard to the Qualified Contract.

## Appendix 1 – Market Study

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In accordance with Section 42 (m)(iii) of the Internal Revenue Code, NMHC requires a comprehensive Market Study to be submitted as part of the LIHTC application. The Market Study, which focuses on the housing needs of low-income individuals or families in the area to be served, shall be completed at the owner's expense and conducted by a disinterested party approved by NMHC. Any application which fails to submit a Market Study shall be returned to the applicant and will not receive further consideration.

The Market Study shall address the following information:

1. A statement of the competence of the market analyst.
2. Demographic analysis of the number of households in the market area which are income eligible and can afford to pay the rent. Estimate of capture rates for the market areas.
3. A description/identification of:
  - A. The proposed site.
  - B. Comparable developments in the market area.
  - C. The project including location, unit counts, income levels, and target population. Market Study must be consistent with the proposed project.
4. An analysis of:
  - A. Household sizes and types in the market.
  - B. Practically available rents, vacancy rates, operating expenses and turnover rates of comparable properties in the market area.
  - C. Practically available rents, vacancy rates and turnover rates of market rate properties in the market area. Projected operating funds and expenses, when available at the time of the study.
  - D. Market demand for tenants with special housing needs, when applicable.
  - E. Market demand for tenants in income averaging properties, when applicable.
5. Identification of A description of:
  - D. The proposed site.
  - E. Comparable developments in the market area.
6. Geographic definition and analysis of the market area.
7. Expected market absorption of the proposed rental housing, including a description of the effect of the market area.
8. Identification and commentary of proposed projects in the market areas.

Projects that are requesting credits from eligible basis generated from a Community Service Facility as defined in Section 42 (d) (4) (C) (iii) must provide a market study that addresses the following:

1. A description of Services provided that improve the quality of life for community residents
2. The market area and demand for services provided.
3. The applicability of service provided to the community.
4. The affordability of the services provided households of 60% AMGI or less.

**NMHC Guidelines for Utilizing the Income Averaging Minimum Set-Aside for Applications Under Consideration or Already Approved**

The Consolidated Appropriations Act of 2018 establishes income averaging as a new minimum set-aside election for new LIHTC developments. It allows LIHTC Qualified Units to serve households earning as much as 80% of Area Median Income (AMI) so long as the average income limit of the Qualified Units is 60% or less of AMI. Designated income levels for the Qualified Units may be set at 10% increments between 20% and 80% of AMI. NMHC will accept proposals for utilizing income averaging in applications that are under consideration, have already been approved or have already initial closed, subject to the requirements outlined below.

**General Requirements for All Income Averaging Proposals:**

- Utilization of income averaging requires NMHC consent
- Proposals will not be accepted without evidence of approval by the syndicator/investor
- The change in the AMI bands must be supported by a market study
- The proposal must maintain the requirements of any NMHC funding award
- A revised application and associated exhibits may be required
- If the use of income averaging triggers higher fees for compliance monitoring, the increase will need to be incorporated into the project budget

**Additional Requirements for Developments That Have Already Initially Closed**

- Proposals will only be considered for Developments that have not yet executed Form 8609
- The proposal must continue to meet the requirements of Section 42 of the Internal Revenue Code
- Set-aside elections made in the Extended Housing Commitment executed at initial closing and recorded at the Recorder's Office may need to be amended