

Working with State Housing Agencies to Improve Survivors' Access to and Retention of LIHTC Housing



October 2013

Dear OVW Grantees and Transitional Housing Providers:

The National Housing Law Project has created this Toolkit describing the Qualified Allocation Plan (QAP) and steps that advocates can take to improve the policies governing the Low-Income Housing Tax Credit (LIHTC) program that affect survivors of domestic and sexual violence. In March 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), which extended the housing protections of VAWA 2005 to applicants and tenants of LIHTC properties.

State housing finance agencies oversee LIHTC programs and along with the U.S. Department of the Treasury monitor compliance. State agencies have discretion to adopt plans and policies that consider the special housing needs of survivors of domestic and sexual violence. Such policies can lead to creating housing for survivors, improving the application process and preventing survivors from being needlessly evicted due to their abusers' actions. State agencies can also act to ensure that the VAWA protections are fully implemented so that survivors are aware of the protections and are able to easily access and use them. Accordingly, advocates should participate in state planning processes to ensure that their state housing agency adopts policies that serve survivors' housing needs.

This Toolkit is designed to provide an overview of the QAP planning process. It contains several sample documents that you can use in working with your state agency.

We hope that you find these materials helpful in aiding your clients. If you have any questions regarding working with states regarding the LIHTC program and housing rights of domestic and sexual violence survivors, please contact:

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Attachments: Regarding LIHTC, QAPs and domestic violence

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List of attachments re: LIHTC, QAPs and domestic violence

- I. Articles and Outlines
 - a. NHLP Newsletter, *Working with State Housing Agencies to Improve Survivors' Access to and Use of Low-Income Housing Tax Credit Housing* (May 2013)
 - b. NHLP Newsletter, *Low-Income Housing Tax Credit (LIHTC) Properties: An Overview for Advocates* (June/July 2012)
 - c. NHLP Newsletter, *VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safe Guards* (April/May 2013)
 - d. NHLP, Overview [Outline] Low-Income Housing Tax Credit Program (Nov. 2013)
- II. Examples of policies that define "special needs populations" to include victims of domestic violence.
 - a. Indiana QAP excerpt
 - b. Michigan Addendum III Draft
 - c. Texas QAP excerpt
- III. Examples of policies that address issues faced by victims of domestic violence
 - a. Good cause for eviction does not include domestic violence
 1. Pennsylvania
 - b. Requesting a change in family composition
 1. Montana
 - c. Proving separation from abuser
 1. Mississippi
 2. Michigan
 3. Oregon
- IV. Examples of comments by advocates
 - a. Proving separation from abuser
 1. Oregon
 - b. Good cause for eviction
 1. Pennsylvania
- V. Examples of LIHTC housing that is targeted to survivors of domestic violence
- VI. Department of Treasury, Administrations Fiscal Year 2013 Revenue Proposal for LIHTC Housing to Provide Appropriate Protections to Victims of Domestic Violence. (This proposal preceded VAWA 2013 but could be used to support an argument for immediate implementation of VAWA 2013 in a state's QAP.)

HOUSING JUSTICE

National Housing Law Project

Newsletter May 2013

Working with State Agencies to Improve Survivors' Access to Low-Income Housing Tax Credit Housing

The Low-Income Housing Tax Credit (LIHTC) program is currently the country's largest affordable housing program. Since the inception of the program, more than two million units financed with LIHTCs have been created, with about 100,000 units annually added. Given the large number of LIHTC units on the market, it is critical to ensure that domestic violence survivors are able to access this housing. There is a lot that advocates can do locally to improve survivors' access to these housing units by working with state financing agencies through the Qualified Allocation Plan (QAP) process. This article will provide an overview of the QAP process and describe how advocates can use that process as an important policy planning tool.

What is the Low-Income Housing Tax Credit program?

Administered by the Department of Treasury's Internal Revenue Service, the Low Income Housing Tax Credit Program (LIHTC) provides tax incentives, written into the Internal Revenue Code, for developers to create affordable housing. The tax credits are provided to each state on a per-capita basis. Each state is then left to manage the program, with some broad outlines of program requirements from the federal government. Therefore, each state has a designated state agency responsible for federal tax credit allocation and has adopted a Qualified Allocation Plan (QAP) to describe the priorities and standards for the awards.

In exchange for tax credits, investors put up cash to support development or rehabilitation of a LIHTC property. Two types of tax credits are available: one at 9% of qualified basis, which is competitively allocated by a state agency, and the other at 4% of qualified basis, which comes with certain bond financing and is usually not competitive. The 9% credit supports about 70% of the cost of the low-income units and 4% credits support about 30% of the cost. Tax credits are received annually for ten years, but the properties remain subject to the rent and use restrictions for much longer, typically at least 30 years.

How affordable are LIHTC units?

On their own, tax credit subsidies provide a moderate level of affordability through rent restrictions. However, many units or tenancies are subsidized through additional sources of federal or state funding, allowing for deeper affordability to lower-income families. Under federal law, the LIHTC program targets applicants with an income level (e.g., 50% or 60% of Area Median Income) that is much higher than most Department of Housing and Urban Development (HUD) or Rural Housing Service programs, and requires rent restrictions accordingly. Nevertheless, some states have imposed deeper income targeting and resulting lower rent requirements on certain LIHTC developments. Furthermore, many LIHTC residents, most of whom are extremely low-income, benefit from additional forms of rental assistance, such as project-based Section 8 or vouchers. Whatever their income targeting and rent restrictions, LIHTC

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units provide below-market rents for hundreds of thousands of families, including families who are survivors of domestic violence.

Who administers the LIHTC program?

In most states, the LIHTC program is administered by the state housing finance agency. The LIHTC program has fewer federal regulatory requirements governing the landlord-tenant relationship than most other affordable housing programs. For example, LIHTC has far fewer federal requirements concerning applications, occupancy, or evictions, but some requirements may be imposed by the state agency administrator or state law.

What is a Qualified Allocation Plan (QAP)?

A state housing finance agency utilizes the Qualified Allocation Process (QAP) to establish the criteria used to select who will be awarded tax credits. These criteria include those that are appropriate to local conditions, but consider projects that:

1. serve the lowest income tenants,
2. do so for the longest period of time, and
3. are located in “qualified census tracts” and contribute to a community revitalization plan.

Furthermore, federal law requires a QAP to include the following ten selection criteria:

1. tenant populations with special housing needs;
2. project location;
3. housing needs characteristics;
4. project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan;

5. sponsor characteristics;
6. public housing waiting lists;
7. tenant populations of individuals with children;
8. projects intended for eventual tenant ownership;
9. the energy efficiency of the project; and
10. the historic nature of the project

Many state QAPs include additional state-created criteria or preferences, in addition to those specified by federal law.

A QAP may prioritize certain types of projects through different mechanisms, the most common of which are preferences or set-asides. With preferences, an agency awards extra points to proposals that meet certain characteristics; whereas set-asides are funds specifically reserved for specific kinds of projects. For example, federal law requires a set aside of at least 10 percent of the state’s allocation for non-profit sponsors; state agencies may create additional set-asides for specific kinds of housing, such as housing for special needs populations, or rural properties, or to preserve other kinds of affordable housing at risk of loss or deterioration.

In addition, each QAP must contain procedures for the agency to monitor the performance of owners receiving the credits during the restricted use period. Some states also issue state regulations or policies, as well as unique forms for owners to report specific information to assist in the monitoring process.

QAPs also must be updated on an annual basis, using a public hearing that is properly noticed. Because these notice periods are not uniform, advocates should check with their state agency to determine when the QAP will be amended and the applicable notice and comment process for public participation. Furthermore, the QAP typically lists or references all deadlines, application fees, restrictions,

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standards and other requirements with which a project sponsor must comply.

How has the QAP been used to increase affordable housing available to survivors?

States have used the selection criteria to increase affordable housing units for survivors. For example, some states specifically define “tenant populations with special housing needs” to include victims of domestic violence. Other states define the term “tenant populations with special needs” broadly, so as to implicitly include a wide range of different groups. Furthermore, many states address the special needs population by requiring that in order to qualify for a preference or set-aside, a certain percentage of the units must be available to that population. In addition, some LIHTC developments have units specifically set aside for domestic violence survivors.

How can advocates use the QAP process to improve protections for survivors?

State protections. Advocates can use the QAP process to advocate for state policy where federal protections are not adequate. For example, while the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) clarifies that applicants and tenants of LIHTC housing cannot be denied or evicted because of domestic violence committed against them, there is no specific requirement that this protection be set forth in each owner’s tenant selection plan or in the lease. Since the lease is the document most often used by the parties and courts to resolve eviction disputes, it is important for the lease to clarify that good cause is required for eviction, and that being a victim of domestic violence does not constitute good cause. Before VAWA 2013, advocates in Pennsylvania worked with their state financing agency to obtain protec-

Statistic of the Month

In the United States, 1.6 million children, or one in 45 children, are homeless in a year.

*National Center on Family Homelessness,
America’s Youngest Outcasts 2010*
http://www.homelesschildrenamerica.org/media/NCFH_AmericaOutcast2010_web.pdf

tions for residents who were threatened with eviction because of domestic violence. The state’s QAP now provides that owners must certify and provide in leases that LIHTC residents will only be evicted for good cause and that domestic violence alone does not constitute good cause for eviction. Similar provisions are likely needed in most states.

Compliance plans and forms. A QAP also includes the state’s obligations to monitor the owner’s performance for compliance with all program requirements. It is, therefore, important to review any plans that a state may develop regarding compliance, rules or regulations and forms for owners to report compliance to the agency or for owners, managers and tenants to use with respect to specific occupancy issues.

In this context, advocates have had success in getting state agencies to change policies that would have had a negative impact on survivors of domestic violence. For example, in Oregon, advocates objected to a form requiring a married applicant seeking housing without his or her spouse to file for separation or divorce and urged, in instances of domestic violence, that a head of household be able to verify income through a declaration. The agency no longer provides the objectionable form and the proposed form provides that an individual may self-certify separation/estrangement at application or for continued occupancy for the purpose of verifying income, assets, etc.

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Other states have included important protections for survivors in their compliance plans. For example, Mississippi permits an applicant who is a married survivor to establish her permanent separation from the abuser by producing a copy of a legal restraining order or documentation that a prospective resident has experienced domestic violence or a statement from a counselor that the separation is permanent. The State of Montana provides, consistent with state law, that a change in family composition may be requested at any time by a domestic violence survivor.

Implementing VAWA 2013. It will be important for advocates to use the QAP process, or any other available state policymaking avenue, to get owners to implement important protections provided by VAWA 2013 during the interim period before the Department of Treasury issues any formal regulations or other guidance for VAWA 2013. For instance, VAWA 2013 provides critical new protections for survivors, mandating that the federal agencies administering the housing programs covered by the law adopt a model emergency transfer plan to be used by owners and managers of LIHTC units and requiring the Department of Housing and Urban Development (HUD) to develop a notice of VAWA housing rights for survivors. Owners and managers of LIHTC units must provide this notice to all applicants and tenants at the time an applicant is denied residency; at the time the individual is admitted; and with any notification of eviction or termination of assistance. Because development of these plans and notices may not occur right away, advocates should consider engaging state agencies through the QAP or other process to provide immediate protections to applicants and tenants, such as required lease addenda or tenant selection plans.

What are practical tips for advocates preparing for the QAP process?

Due to its central role in allocating tax credits, the QAP can be an important policy planning document over which domestic violence advocates can exert influence. To prepare for the QAP process, advocates should:

- assess the housing needs of low-income families who are survivors of domestic violence,
- work with other advocates to determine what policies are necessary,
- determine the notice and comment periods for the state's QAP revisions,
- develop a strategy, which may include:
 - advocating for selection criteria for LIHTC applications that will provide for developing affordable housing that meets those needs,
 - working to improve the occupancy policies governing existing LIHTC housing so as to improve the rights of applicants and current occupants who are domestic violence survivors, and
 - working with housing providers to seek tax credits for units that will serve survivors of domestic violence.

For more information, please contact the National Housing Law Project. ■

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HOUSING JUSTICE

National Housing Law Project

Newsletter June/July 2012

Low-Income Housing Tax Credit (LIHTC) Properties: An Overview for Advocates

Many advocates have questions regarding the Low Income Housing Tax Credit Program (LIHTC), which finances construction and rehabilitation of affordable housing. The program has funded approximately 2.4 million units. Given the program's size, a number of survivors of domestic and sexual violence likely reside in LIHTC properties. Advocates therefore may have questions regarding protections available to survivors who face evictions from LIHTC units that are related to the perpetrator's misconduct. Further, because the LIHTC program is one of the country's largest sources of affordable housing units, survivors relocating from shelters or transitional housing may be interested in applying for these units.

This article highlights some of the common issues that arise in housing that is *only* assisted with tax credits and does not receive additional federal rental housing subsidies. Unfortunately there are few rules and regulations protecting LIHTC applicants and tenants. For example, the housing protections of the Violence Against Women Act (VAWA) apply to the public housing and Section 8 programs, but not the LIHTC program. However, LIHTC funds often are used with other federal subsidies, such as Section 8 vouchers. If these other rental subsidies are used, the rules that govern these subsidies most likely will provide the greatest benefit for tenants or applicants. Thus, a Section 8 voucher holder applying to or living in LIHTC housing would be entitled to VAWA's protections

against denials of housing and evictions.

Advocates should contact the National Housing Law Project if they have questions regarding the types of subsidies a project is receiving.

Who is Eligible?

The LIHTC statute contains only a few eligibility requirements for families, which are discussed in detail below.

Income Eligibility: Applicants for LIHTC units often must meet income restrictions. Owners can restrict at least 20% of a project's units for households with incomes at or below 50% of the area median income (AMI), or they can restrict at least 40% of units for households with incomes at or below 60% of AMI.

Significantly, a state tax credit agency may impose additional affordability requirements on owners as a condition of receiving tax credits. A number of states have done so, and many LIHTC properties have designated all of their units for low-income households. Once an owner has chosen the income restrictions it will abide by, it must follow those restrictions throughout the term of the LIHTC compliance period, which is a minimum of 15 years.

Student Eligibility: The rules defining the eligibility of students seeking to live in LIHTC housing are complex, inconsistent and not necessarily rational. IRS rules provide that if all of the persons seeking to live in the unit are students, they must fall within a defined exception, or the unit is out of compliance. Advocates with questions regarding student eligibility in federally subsidized housing

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**HUD Provides Guidance on
Tenant Contact Information**

**Advocates Await Further Action on
Violence Against Women Act**

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programs should contact NHLP.

Nondiscrimination Against Section 8 Voucher

Holders: The LIHTC statute includes a provision prohibiting discrimination against Section 8 voucher holders. Accordingly, LIHTC owners cannot reject families based solely on the fact that they have a Section 8 voucher. Such a protection can be vital for applicants who have difficulty finding a landlord who will accept their voucher.

What are the Rents?

LIHTC rents are set at a flat rate based on the level of affordability and bedroom size of the unit. Individual rents are based on the level of rent restriction the owner has chosen. Tenants in any of the restricted units pay 30% of the income limit (50% or 60% of AMI). The owner then assumes a family size of 1.5 persons per bedroom. This is a flat rent and is *not* based on the family's actual income. For example, assume that LIHTC units in the city of St. Louis are restricted to families with incomes equal to or less than 60% of AMI. Based on 30% of 60% of the AMI for the area, monthly rent for a family of three may be up to \$964.

Each year, the Department of Housing and Urban Development determines the AMI, and each state issues the maximum allowable rent for a unit based on that data. However, an owner is not required to set rent that high. Further, an owner must comply with state and local law, as well as any lease provisions, regarding rent increases.

LIHTC rents are gross rents, meaning that they include mandatory fees and utilities. Therefore, if tenants pay for any utilities, the owner must establish a utility allowance. IRS regulations provide for a number of different methods for determining utility allowances. The utility allowance reduces the maximum rent that the owner may charge. In the above example, if the rent is \$964 and the utility allowance is \$75, the owner cannot charge a rent that exceeds \$889. Pursuant to a change in a project's utility allowance, all rents must be changed accordingly within 90 days. The owner must review utility allowances annually.

Are there Tenant Protections in the Event of an Eviction?

Owners of properties funded under the LIHTC program must have good cause to evict tenants. This rule was first clarified statutorily in 1990. However, many states did not implement this rule for well over a decade. In July 2004, the IRS issued a Revenue Ruling that confirmed that the statute requires properties to have a recorded covenant that prohibits evictions without cause. This requirement provides an important tool in ensuring that low-income tenants can remain in their homes. Advocates should ensure that their state LIHTC properties are in compliance with these requirements.

As mentioned above, VAWA's housing protections for domestic violence survivors do not apply to LIHTC units unless a tenant is renting a LIHTC unit with a Section 8 voucher. However, LIHTC properties are subject to the Fair Housing Act, which prohibits discrimination on the basis of sex. Advocates have successfully challenged evictions of domestic violence survivors from LIHTC properties by using the Fair Housing Act. ■

Available Online: Free Housing and Domestic Violence Manual

The National Housing Law Project is pleased to announce the publication of "Maintaining Safe and Stable Housing for Domestic Violence Survivors: A Manual for Attorneys and Advocates." The manual focuses on the rights of domestic violence survivors who are facing loss of housing, who need to improve their housing safety, or who need to relocate. Topics include changing the locks; breaking the lease; defending against evictions and subsidy terminations; housing discrimination; reasonable accommodations requests for survivors with disabilities; and housing rights under the Violence Against Women Act.

The Manual is available for free at <http://www.nhlp.org/node/1745>

HOUSING JUSTICE

National Housing Law Project

Newsletter April-May 2013

VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards

On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 ("VAWA 2013"). The law continues many of the housing protections that had been provided by the Violence Against Women Act of 2005 ("VAWA 2005") and further expands these safeguards in several crucial ways. Like VAWA 2005, VAWA 2013 prohibits public housing authorities ("PHAs") and owners and managers of public housing, the Section 8 Housing Choice Voucher program and Section 8 Project-based housing from denying a survivor admission to, assistance for, or evicting them from the housing because the applicant or tenant is a victim of domestic violence, dating violence, or stalking. In addition, incidents of abuse can neither be construed as a serious or repeated lease violation nor considered good cause for terminating the assistance or tenancy.

Survivors also cannot be denied or evicted from the housing on the basis of criminal activity related to the abuse committed against them or a household member. However, a PHA, owner or manager may evict or terminate assistance to a victim if the PHA, owner or manager can demonstrate an actual and imminent threat to other tenants or employees at the property in the event that the tenant is not evicted or terminated from assistance. Additionally, VAWA 2013 continues safeguards for survivors concerning lease bifurca-

tion, portability of Section 8 voucher assistance and confidentiality. The new law also does not amend PHAs' obligations to undertake programs to assist survivors and, in their five-year plans, to set out goals and policies used to serve survivors' housing needs.

The following highlights key differences between VAWA 2005 and VAWA 2013.

Housing covered. Previously, VAWA 2005 only applied to public housing, the Section 8 Housing Choice Voucher program and Section 8 Project-based housing. HUD regulations implementing VAWA 2005 also covered Section 202 housing for the elderly and Section 811 housing for people with disabilities. All of these programs are administered by HUD. VAWA 2013 expanded the list of housing to which VAWA applies by including additional HUD programs and certain housing administered by the Department of Agriculture and the Department of Treasury. VAWA 2013 applies to the following types of housing ("covered housing programs"):

Department of Housing and Urban Development (HUD)

- Public housing;
- Section 8 Housing Choice Voucher program;
- Section 8 Project-based housing;
- Section 202 housing for the elderly;
- Section 811 housing for people with disabilities;
- Section 236 multifamily rental housing;
- Section 221(d)(3) Below Market Interest Rate (BMIR);

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VAWA 2013 Provides New Housing Protections for Survivors

Implications of HUD's Disparate Impact Rule for Advocates and Survivors

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- HOME;
- Housing Opportunities for People with Aids (HOPWA);
- McKinney-Vento Act programs.

Department of Agriculture

- Rural Development (RD) multifamily housing programs.

Department of Treasury

- Low-Income Housing Tax Credit (LIHTC)

Parties whom VAWA protects. VAWA 2013 expands the housing protections to cover survivors of sexual assault. As such, VAWA 2013 protects anyone who:

1. Is a victim of actual or threatened domestic violence, dating violence, sexual assault or stalking, or an “affiliated individual” of the victim (spouse, parent, brother, sister, or child of that victim; or an individual to whom that victim stands in loco parentis; or an individual, tenant or lawful occupant living in the victim’s household) AND
2. Is living in, or seeking admission to, any of the covered housing programs.

Notably, VAWA 2013 gets rid of the requirement under VAWA 2005 that the household member be related by blood or marriage to the victim. Therefore, VAWA 2013 protects individuals who simply live in the victim’s household, regardless of whether they are related by marriage or blood to the victim. In addition, the law revised the definition of “domestic violence” to include crimes of violence committed by an intimate partner of the victim or by a person who has cohabitated with the victim as an intimate partner. VAWA 2013 further amended the definition of “stalking” by including a more general definition than had been provided by VAWA 2005.

Bifurcation. Like VAWA 2005, VAWA 2013 allows PHAs, owners and managers of the covered housing programs to bifurcate a lease to evict or terminate assistance to any tenant or lawful occupant who engages in criminal acts of violence against an affiliated individual or others. This action may be taken without penalizing the survivor

For More Information

Violence Against Women Reauthorization Act of 2013, <http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>

who is also a tenant or lawful occupant. Importantly, VAWA 2013 adds a new protection for tenants who remain in the housing as a result of the lease bifurcation. Specifically, if a PHA, owner or manager evicts or terminates assistance to an individual because of criminal acts of violence against family members or others, and that individual is the only tenant eligible to receive the housing assistance, then any remaining tenant will have the opportunity to establish eligibility for the assistance. If no tenant can establish such eligibility, then the PHA, owner or manager must provide the tenant reasonable time (as determined by the respective federal agency) to find new housing or to establish eligibility under another covered housing program.

Certification.

- Discretion of PHAs and owners. Like VAWA 2005, VAWA 2013 allows, but does not require, PHAs, owners and managers to ask in writing an individual for certification that he or she is a victim of domestic violence, dating violence, sexual assault or stalking if the individual seeks VAWA’s protections. At their discretion, PHAs, owners or managers may apply VAWA to an individual based solely on the individual’s statement or other evidence.
- Agency-approved form. VAWA 2013 revised the certification process outlined under VAWA 2005 and implemented through forms HUD-50066 or HUD-91066. The new law permits PHAs, owners and managers to request that an individual certify via a form approved by the appropriate federal agency. This form must (1) state that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault or stalking; (2) state that the incident, which is the ground for protection, meets the requirements under the

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statute; and (3) include the name of perpetrator, if the name is known and safe to provide.

- **Other permissible documents.** VAWA 2013 expanded the type of third-party documentation to add one signed by a victim and a mental health professional. Also, a victim may now provide an administrative record to document the abuse.
- **Timeline.** Both VAWA 2005 and 2013 provide that after a PHA, owner or manager has requested certification in writing, an applicant or tenant has 14 business days to respond to the request. If an individual does not provide the documentation within the 14 days, a PHA, owner or manager may deny admission or assistance, terminate the assistance or bring eviction proceedings for good cause. However, a PHA, owner or manager may extend this timeframe.

Conflicting certification. In situations where the PHA, owner or manager receives documentation with conflicting information, VAWA 2013 provides that the PHA, owner or manager may require an applicant or tenant to submit any of the above-mentioned third-party documentation. While VAWA 2005 did not cover this issue, the HUD regulations implementing VAWA 2005 did address the matter by similarly allowing third-party documentation in instances where two or more household members claimed to be the victim and named the other person as the perpetrator.

Emergency transfers. VAWA 2013 includes a new provision mandating that each federal agency adopt a model emergency transfer plan to be used by PHAs and owners or managers of housing assisted under the covered housing programs. This transfer plan must allow survivor tenants to transfer to another available and safe dwelling unit assisted under a covered housing program if (1) the tenant expressly requests the transfer and (2) either the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same assisted dwelling unit, or where the tenant is a victim of sexual assault and the sexual assault occurred on the premises 90 days before the transfer request. In addition, the transfer plan

must incorporate reasonable confidentiality measures to ensure that the PHA, owner or manager does not disclose the location of the new unit to the abuser. VAWA 2013 further mandates that HUD establish policies and procedures under which a victim requesting an emergency transfer can receive a tenant protection voucher.

Notification and language access. VAWA 2013 significantly revised the notification requirements for PHAs and owners or managers of the covered housing programs. The new law requires HUD to develop a notice of rights for victims (“HUD notice”), which includes the right of confidentiality. PHAs, owners and managers must provide the HUD notice accompanied by the agency-approved, self-certification form to applicants and tenants: (1) at the time an applicant is denied residency; (2) at the time the individual is admitted; and (3) with any notification of eviction or termination of assistance. In addition, the HUD notice must be available in multiple languages and be consistent with HUD guidance concerning language access for individuals with limited-English proficiency. ■

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Overview

Low-Income Housing Tax Credit (LIHTC) Program November 2013

Key Components

- **Number of Units:** about 2,000,000, growing at about 100,000 annually, at a foregone revenue cost anticipated to be \$8 billion per year; credit allocation increased and indexed Dec. 2000. Now \$2.25 x state population or minimum of \$2.6 million.
- **How Program Works: Subsidy Mechanism:** fixed amount of tax credits given to state Housing Finance Agency (HFA), which competitively allocates credits under Qualified Allocation Plan (QAP); (find the amount allocated to your state at http://www.novoco.com/low_income_housing/lihtc/federal_lihtc.php). Investors buy income tax credits in qualified properties that have received state allocation, creating cash equity for owner that reduces project development debt burden, in exchange for agreement to rent a specific number of units to qualified tenants at specified rents, usually below-market. Unused amounts get reallocated to other states. Two tax credits are available: one at 9% of depreciable basis, competitively allocated; the other, at 4% of depreciable basis, comes with state bond financing, which is capped and allocated by a state agency, which may or may not be very competitive.
- **Ownership:** During recapture period, usually limited partnerships, in which individuals and usually corporations invest as limited partners, with corporate, nonprofit, or individual general partners; after credits used, properties often later sold to general partner or others, often with new credits & re-syndication.
- **Use Restrictions:** *Occupancy restrictions* (federal minimum): owner's choice of two: at least 20% of units occupied by tenants at no more than 50% of AMI, or 40% of units occupied by tenants at no more than 60% of AMI; many projects have 100% LIHTC units. *Rent restrictions:* those units must have "affordable" flat rents set at 30% of income of tenants at the top of the selected AMI category, with an assumed family size of 1.5 persons per bedroom. For properties developed between 1986 and 1989, these restrictions last only 15 years; post-1989 developments have at least 30 years, and up to 55 years in some states. Because tax credits are competitively allocated, *states may impose more restrictive requirements than the Code minimum, e.g.,* greater percentages of restricted units, deeper income targeting and rent levels, or longer use restrictions. In any event, LIHTC owners may not refuse to rent to Voucher holders because of their status, presumably at least so long as the rents are determined "reasonable" by the PHA. 26 U.S.C.A. § 42(h)(6)(B)(iv) and 26 C.F.R. § 1.42-5(c)(1)(xi).
- **Who's Involved?** IRS, state credit allocation agency, owner, management either owner or separate company. If there are additional subsidies, such as vouchers or Project-Based Vouchers, PHA may also be involved.

- **Key Regulatory Features:** State agency regulatory agreement, Treasury regulations at 26 C.F.R. §1.42, Lease. Owner files annual compliance certification with state agency. State Qualified Allocation Plan, copies available at http://www.novoco.com/low_income_housing/lihtc/qap_2013.php
- **Finding Out Where this Housing Is Located in Your Community:** available at: <http://www.preservationdatabase.org/datasources.html>. This site compiles all of the federal housing data bases into one document for each jurisdiction. Also <http://www.huduser.org/portal/datasets/lihtc.html>. This HUD site will also provide general information about the characteristics of the program by state, prior to 2011.. More accurate data may be available from your state agency, often via its website. To see where units are located on a map and by zip code or address, go to http://www.novoco.com/low_income_housing/resources/maps_data.php This site will also provide basic information about the development including who it serves, bedroom size, types of funding, etc.
- **Tips for Determining What Kind of Housing Is Involved:** Lease; Rent Level; Owner type; Age of Housing (LIHTC can be used for new or rehab, but all post-1986); Ask manager
- **Getting Information:** 26 U.S.C. § 42 (part of Internal Revenue Code); 26 C.F.R. §1.42; state agency rules or guidance (if unpublished, ask state agency); IRS Guide, *Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition* (Jan. 2011) (available at: <http://www.irs.gov/businesses/small/article/0,,id=235488,00.html>)
- **Related Subprograms or Set-Asides for Special Uses:** determined by state agency rules and Qualified Allocation Plan.

Major Applicant and Tenant Issues

- **Admissions:**
 - Code requirements concerning occupancy of certain units by tenants in specific income categories.
 - Requirement of non-discrimination against Voucher holders, *supra*.
 - Students: Special Rules on Student Eligibility. *See* 26 U.S.C.A. § 42 (i)(3)(D) (West 2013); student status verified annually.
 - Protections (on common substantive criteria and procedural protections) from Fair Housing laws (e.g., Title VIII of the 1968 Civil Rights Act), from any state-imposed requirements pursuant to the QAP and regulatory agreement, or possibly from constitutional sources, *e.g.*, due process (note governmental action and property interest issues).
 - State agency may have awarded tax credits based on owner's commitment to serve special populations.
 - Owner tenant selection policies relating to Voucher holders. *See* 42 U.S.C.A. §§ 13661(c), 13664(a)(2),(3) (West 2013) (reasonable time periods on criminal history look-back).
 - Violence Against Women Act (VAWA) 2013 protections regarding admission
- **Rents**
 - Income-based rents? No, gross rents under program are flat rents based on AMI and size of unit, not individual tenant income; for restricted units, unless owner has agreed to even lower rents with state agency, gross rents are set at either 30% of 50% of AMI, or 30% of 60% of AMI, in both cases with an assumed family size of 1.5 persons per

bedroom (one person for 0-BR unit). Rents can increase upward with changes in AMI. 26 U.S.C. § 42(g)(2). (See Attachment) Some tenants may have Vouchers (Project-based or Housing Choice), or other project-based Section 8 with their contributions determined under applicable Section 8 program rules. (For Voucher tenants, total rent may exceed LIHTC limits, if market reasonable, up to local payment standard.) Some tenants may have Rural Development rental assistance.

- Recertification:
 - For mixed-income developments, once annually tenant right to continued occupancy unaffected by increases in income until 140% of income limit (i.e., 140% of 50% AMI, or 140% of 60% AMI). If recertified tenant income this 140% limit is exceeded, the unit can still qualify for credit if owner rents next available unit to an eligible family, and tenant could stay (at LIHTC rent level). However, unclear whether owner could instead claim good cause to evict. Calculator for determining rent <http://www.novoco.com/products/rentincome.php>
 - If development is 100% LIHTC rent-restricted, IRS does not require recertification after initial occupancy (because next available unit will be rented to eligible family, regardless of any one family's increased income), but state agency may require additional income recertifications (e.g., CA requires one more after initial occupancy).
 - IRS Guide for Form 8823 references HUD Handbook 4350.3, which outlines requirements for verification of income and assets. HFA may add additional requirements.
- Utility Allowance: flat rents are gross rents, and where utilities are tenant-paid, tenant must receive a utility allowance based usually on the local PHA's allowance for comparable units with similar utility mix or utility allowance used by Rural Development housing, if applicable. 26 C.F.R. §1.42-10 and § 1.42-12 (may use engineering study).
- All mandatory charges and any charges for services included in eligibility basis are included in rent.
- **Grievance Procedures:** none required by statute or regulation, although regulatory agreement could do so.
- **Evictions and Terminations**
 - Notice: no federal statutory or regulatory requirements re length and content. Due process (where cause required)? State rules or policies may require certain notice.
 - Good cause required, both during lease and at end of lease term? Good cause required by the statute, *see* IRS Revenue Ruling 2004-82 (July 30, 2004) (statutory interpretation), or by due process, or by the terms of the state's regulatory agreement. *See also, e.g.,* Owner's Annual Certificate of Compliance with state agency; the project's Regulatory Agreement; and various cases, *e.g., Carter v. Maryland Mgmt. Co.*, 835 A.2d 158 (Md. 2003) (good cause required for termination of LIHTC/Voucher tenancy, but good cause found); *Cimarron Village Townhomes, Ltd. v. Washington*, 1999 WL 538110, 1999 Minn. App. LEXIS 890 (Minn. App. 1999) (good cause eviction protection required under LIHTC statute), 659 N.W.2d 811 (Minn. App. 2003) (finding good cause); *Bowling Green Manor v. LaChance*, 1995 Ohio App. LEXIS 2767 (because eviction of Section 8 Voucher tenant from LIHTC unit constituted state action, owner could therefore not refuse to renew lease absent good cause); *Mendoza v. Frenchman Hill Apts.*, No. CS-03-0494-RHW (E.D. Wa. order Jan. 20, 2005) (finding §

1983 claim unavailable to challenge HFA's and owner's failure to include required prohibition on no-cause evictions in regulatory agreement); Jolin, "Good Cause Eviction and the Low Income Housing Tax Credit," 67 U. Chi. L. Rev. 521 (2000); *see also* info on NHLP website <<http://nhlp.org/resourcecenter?tid=106>>.

- Confusion created because: Tenant may not be aware of good cause requirement, many states do not require provision to be in the lease, some just include in an addendum. Also eviction at end of lease term, confusion created by IRS 8823 Guide, Ch. 26 (rev. Jan. 2011), which apparently contradicts the statutory requirement of good cause for a "termination of tenancy."
- Pre-judicial administrative review?: None.
- Effect of eviction on future application to federally assisted housing: no ban, just impact on prior tenant history.

- **Current Important Issues:**
 - Will LIHTC survive budget pressure to restrict various "tax preferences"? How will any reduction in available Vouchers affect number of ELI tenants in LIHTC properties?
 - Use restrictions (15 years) on pre-1990 units have expired, possibly causing displacement if restricted rents were below-market and property exited program; next wave of expirations should occur after 2020 (30 years); major risks concerning compliance and regulatory oversight during the last 15 years of the extended use period after credits have already been taken and recapture period has closed and owners seeking to exit after 14th birthday under "qualified contract" process.
 - Fair Housing considerations in location of units (*e.g.*, *Inclusive Communities Project v. Texas Dep't of HCA* litigation)
 - Basic tenants' rights often lacking
 - Good cause for eviction in the lease, in eviction notices, or in regulations of state tax credit allocation agency? Problem of end of lease terminations noted above
 - Implementation of VAWA 2013 protections, regarding admissions, transfers and evictions, etc.
 - If data demonstrates low voucher utilization, evidence of violation of LIHTC non-discrimination duty or of Fair Housing laws? PHA could provide information about the use of Vouchers in particular developments.
 - Housing and Economic Recovery Act (HERA) of 2008 required HFAs to begin reporting tenant incomes and rent to HUD and in 2011 to gather race and ethnicity data. The information must be available to the public. 42 U.S.C. § 1437z—8
 - Seek to influence the QAP or state agency rules governing LIHTC developments? (state tax credit agency must submit QAP annually after public hearing)
 - Advocacy in QAP process to ensure:
 - LIHTC subsidy linked with other available subsidies (*e.g.*, vouchers or PBVs) to reach needs of very low-income tenants
 - Fair Housing considerations in unit locations and marketing
 - Preference or set aside for special populations, preservation of units, etc.

Examples of policies that define “special needs populations” to include victims of domestic violence.

1. Indiana QAP excerpt
2. Michigan Addendum III Draft
3. Texas QAP excerpt

2012-2013 QAP

Allocation Plan



This "Allocation Plan" constitutes the "Qualified Allocation Plan" for the State of Indiana (the "State"), and is intended to comply with the requirements set forth in Section 42 of the Internal Revenue Code of 1986, as amended, including all applicable rules and regulations promulgated there under (collectively, the "Code"). As used herein, "Applicant" shall include any owner, principal and participant, including any affiliates.

This Allocation Plan applies to all allocations of rental housing tax credits ("RHTCs") pursuant to Section 42 of the Code, multifamily private activity tax-exempt bonds ("Bonds"), Indiana Affordable Housing and Community Development Fund, and HOME Investment Partnership funds ("HOME") in conjunction with RHTCs (collectively "Rental Housing Financing Programs") made in calendar year 2012 or 2013 and sets forth: (A) the role of the Indiana Housing and Community Development Authority ("Authority") ("IHCD") in administering the Rental Housing Financing Programs; (B) housing goals of the Authority based on the perceived needs throughout the State; (C) Guidelines for Developments receiving RHTCs in conjunction with Private Activity Tax-Exempt Bond Financing; (D) "set aside" categories established by the Authority pursuant to the Code and Indiana law to further the accomplishment of the State's housing goals; (E) minimum threshold requirements which all Applicants and housing Developments must satisfy in order to be considered by the Authority for Rental Housing Financing; and (F) evaluation factors which the Authority will consider in analyzing each application that satisfies all applicable minimum requirements.

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5. Special Housing Needs

10% of available annual RHTCs will be set aside for units that provide residential housing for “special needs populations”, pursuant to Indiana Code (“IC”) 5-20-1-4.5. Special needs populations include the following:

- 1) Persons with physical or developmental disabilities.
- 2) Persons with mental impairments.
- 3) Single parent households.
- 4) Victims of domestic violence.
- 5) Abused children.
- 6) Persons with chemical addictions.
- 7) Homeless persons.
- 8) The elderly.

The Authority shall allocate RHTCs under this section based on the proportionate number of set aside units of a qualified building that are used to provide residential housing for special housing needs.

Required Documentation: Completed and executed Form K. Place Form K in Tab O.

6. Affordable Housing Database

Applicants that are proposing to develop permanent supportive or rental housing must participate in the Affordable Housing Database. www.indianahousingnow.org

7. Indiana Housing Online Management System - <https://ihcdaonline.com/>

All IHCDAs assisted multi-family developments are required to enter tenant events using IHCDAs Indiana Housing Online Management rental reporting system within thirty (30) days of the tenant’s event date. Tenant events include move-ins, move-outs, recertifications, unit transfers, and rent and income changes. Annual Owner Certification Rental Reports will be required to be submitted electronically using the Indiana Housing Online Management System.

8. Rental Housing Financing Returned by Applicant

If Authority funding (i.e. RHTC, HOME, Low-Income Housing Development Fund, Multifamily private activity tax-exempt bonds) previously reserved and/or allocated to a Development is returned to or rescinded by the Authority, all applications submitted by the Applicant (or its principal) that meets Threshold Requirements will be subject to a reduction in points by the Authority from the total points otherwise scored.

Credits Returned Within:	Deduction in Points
30 – 59 Days from the date of Carryover	2 Point Deduction
60 – 89 Days from the date of Carryover	4 Point Deduction
90 – 119 Days from the date of Carryover	6 Point Deduction
120 or more Days from the date of Carryover	10 Point Deduction



ADDENDUM III

Michigan's Low Income Housing Tax Credit Program Supportive Housing Set-aside

Application Process and Threshold Requirements

ADDENDUM III – Application

GUIDANCE MATERIAL:

Attachment A: Supportive Housing Definitions

Attachment B: Supportive Housing Site Selection Guidelines

I. Program Overview

A. Prior to Application:

- Developers are encouraged (not required) to submit an initial concept letter for review and discussion prior to submitting an application. This provides an opportunity for the developer and his/her team to receive technical assistance in conceptualizing the project and assuring that key components are included. Submission of an initial concept letter, however, does not change the applicable deadline for applications.
- Developers are strongly encouraged to have a MSHDA staff member visit the project site prior to application submission. Rental Development and Homeless Initiatives staff can be reached at 517-373-6880. (See MSHDA Supportive Housing Site Selection Guidelines and Definitions.)

B. General Application Information– (see the QAP for additional information):

- **Minimum Use:** Projects must agree to remain low income for a minimum of 30 years but may earn additional points for longer commitment, as described in the Scoring Summary (Addendum I of the Combined Application).
- **Non-eligible Population:** Elderly-only projects are excluded from the Supportive Housing Set-Aside.
- **Operating Costs:** Project operating costs cannot exceed MSHDA standards unless a waiver is granted by the Authority.
- **Population Served:** Projects must have a minimum of 25% of the units targeted to people who meet the definitions outlined in Attachment A (i.e. persons with special needs, homeless, homeless youth or youth aging out of foster care, or those who are survivors of domestic violence).
- **Project Size:** Projects may not exceed 75 units in total unless a waiver is granted by the Authority. The project size limitation does not apply to projects in DHHP.
- **Service Organization Collaboration:** Developers will be required to collaborate with a local service organization(s) to assure adequate service coordination and delivery for tenants.
- **Unit Configuration:** Single Room Occupancy (SRO) is an eligible use under this category, see definition in Attachment A.
- **Project Limits:** Projects must meet the conditions designated within the Qualified Allocation Plan, unless a waiver is granted by the Authority.
- **Income Eligibility: Tenants incomes must be at or below 30% AMI to be eligible for targeted supportive housing units.**

II. Application Process and Threshold Requirements:

- **Supportive Housing Set-aside Threshold Requirements:** All Qualified Allocation Plan for threshold requirements must be followed.
- **In addition:** the following Supportive Housing Set-Aside threshold requirements/exhibits are required:
 1. **Site Selection:** Project location must meet MSHDA's Supportive Housing Site Selection Criteria. (See Attachment B.)

2. Addendum III Application

3. Letters of Support:

- a. Attach a letter of endorsement either from the Continuum of Care or other Community Collaborative planning group that indicates that the group has reviewed and endorsed your project plan and submission.
- b. If the service provider is reliant on funding from other entities to sustain the services identified, attach a letter documenting support from the funder(s). (For example, if the service provider is a nonprofit organization that contracts with a local Community Mental Health Board (CMH), the CMH must provide a letter of support for the project.)

4. Memorandum of Understanding/Contract:

Submit written documentation (specifically, a “Memorandum of Understanding” or similar contract) between the developer, Management Company, and service provider(s) that outlines mutual roles and responsibilities in this project. **The MOU should incorporate the supportive services plan agreed to by the parties**, and provide:

- Proof of commitment by the service provider, including signature of the Executive Director;
- A letter of support from the primary funder of the case management and/or service coordination agency;
- Demonstration of an ongoing commitment by the developer and/or landlord to assure sustained availability of support services.

(Please Note: It is expected that the Executive Director or Board Chair of the service provider organization be a signatory to these agreements.)

The MOU (See Tab G for sample format) will include:

- a. A commitment from the local lead agency to provide, coordinate and/or act as a referral agent to assure that supportive services will be available to the targeted tenants.
- b. The referral and screening process that will be used to refer tenants to the project, the screening criteria that will be used, and the willingness of all parties to negotiate reasonable accommodations to facilitate the admittance of persons with disabilities into the project.
- c. A communications plan between the project management and the local lead agency that will accommodate staff turnover and assure continuing linkages between the project and the local lead agency for the duration of the compliance period.

- d. Acknowledgment of the property's rent structure and a description of how Supportive Housing tenants may access rental assistance, should they require it, to afford the apartment rents.
- e. Certification that participation in supportive services will not be a condition of tenancy unless otherwise required by a Federal subsidy.
- f. Agreement to affirmatively market to persons with disabilities.
- g. Agreement to include a section on reasonable accommodation in property management's application for tenancy.
- i. Agreement to accept Section 8 vouchers or certificates (or other rental assistance) for eligible tenants and not require total income for persons with rental assistance beyond that which is reasonably available to supportive housing tenants.
- h. A description of how the project will make the targeted units affordable to supportive housing tenants with very low incomes.

Projects will be regularly monitored by MSHDA to determine the percentage of units occupied by Supportive Housing Tenants.

- 5. **Service Coordination Plan:** On-site service coordination must be available to all supportive housing tenants. This may be provided through the partnership with the local service organizations, but it is recommended that the following schedule serve as a minimum standard. Additional on-site services may be needed depending on the population served by the supportive housing project.
 - a. One day per week – projects of 30 units or less
 - b. Two days per week – projects 30-60 units
 - c. Three days per week – projects 60-75 units
- 6. **Minimum 25% of total units are Supportive Housing units.** Manager units count neither toward total units nor Supportive Housing units for calculating percentages.
- 7. **Underwriting Requirements:** Proposals with a MSHDA HOME Loan planned are required to follow MSHDA's Direct Lending program underwriting parameters. Therefore, projects being awarded a tax credit reservation will be required to submit a second copy of their tax credit application for underwriting purposes.
- 8. **Other Requirements:** Proposals receiving a LIHTC reservation may apply for MSHDA Project Based Voucher (PBV) Assistance for Supportive Housing units. The proposal will be required to meet the PBV processing requirements. Applications for PBV assistance must be for a minimum of 5 units per development and a maximum of 100% of the development's units.

III. Scoring and Ranking:

Projects submitted under the Supportive Housing Set-Aside will be scored and ranked according to the scoring criteria outlined in the Addendum I and will be required to meet all of requirements contained in Addendum I and the QAP, as well as the requirements contained in this Addendum III.

1. MSHDA will award credits to the highest-scoring projects meeting all threshold requirements.
2. Credits not allocated under the Supportive Housing set-aside will be reallocated to the general pool.

DRAFT

ADDENDUM III

Project Name:
Project Address:

A. Owner Identification:

Organization
Primary Address
Contact Person
Contact Phone
Contact Fax
Contact Email
President/CEO

B. Property Management Company Identification Information:

Organization
Primary Address
Contact Person
Contact Phone
Contact Fax
Contact Email
President/CEO

C. Lead Organization Identification Information:

Organization
Primary Address
Contact Person
Contact Phone
Contact Fax
Contact Email
President/CEO

D. Service Organization Identification Information:

Organization
Primary Address
Contact Person
Contact Phone
Contact Fax
Contact Email
President/CEO

E. Project Description

Attach Pages 1- 12 of the Combined Application and Addenda for Rental Housing Programs.

F. Unit Description, Targeted Supportive Housing Populations and Community Need

Number of Units	Efficiency	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
Total Project					
Supportive Housing					
With PBV					
Barrier Free					

Identify number of buildings and the number of stories per building:

Identify number of units per building:

Identify accessible features available for targeted units:

Identify the type of units:(apartment, Single family home, townhouse, duplex,

Does the building have an elevator?

Provide a brief project description including how the project will meet the needs of the targeted tenants including access to transportation, proximity to community amenities, including social, recreational, educational, commercial and health facilities: Attach a map including the distances for the tenant to access the community resources listed above:

Community/Supportive Service Room

Projects are required to provide community or supportive service space to projects with 11 or more units. A minimum of 15 square feet per residential unit is required.

Projects that provide additional community space to offer additional opportunities for residents such as enrichment classes or employment training on-site will be awarded 2 points. Documentation must be provided demonstrating the partnering agencies providing these opportunities and the funding source of the programs or classes. If additional community space will be included, please describe: _____

Targeted Supportive Housing Populations:

Provide a description of the population(s) targeted for the Supportive Housing Units: Refer to definitions within Addendum III – Attachment A. _____

Projects that have demonstrated in their Supportive Service Plan to serve the supportive housing populations most in need as outlined below will receive additional points:

- a. Chronically Homeless per HUD’s current definition – 4 points
- b. Homeless with a Special Need – 2 points

A minimum of 30% of the supportive housing units must be set aside to receive points from either a. and/or b. listed above. Separate waitlists must be maintained for these populations.

Developing in a High Need Area:

Points will be awarded to those projects that can document a high need area where the homeless count is greater than 500 persons within the City or County that the development is located:

- The documented need must be presented based on HMIS and Point-In-Time data available to the community in the City or County where the development is located within the current year or most recent available data.

Proposed Rents:

Supportive housing tenant incomes must be at or below 30% AMI. However, for the purpose of the LIHTC income requirements, if subsidy is anticipated, the applicant may choose up to 50% or 60% rent levels. The management must be in agreement to accept Section 8 vouchers or certificates (or other rental assistance). The income requirements for supportive housing tenants can't exceed that which is reasonably available to persons with very low incomes currently receiving SSI and SSDI benefits.

Provide a description of how the project will make the targeted units affordable to persons whose incomes are extremely low. If there is a current commitment for subsidy, attach funding commitments or list details of any anticipated applications to provide subsidy to the supportive housing tenants with incomes at or below 30% ami: _____

G. Lead Service Agency and Supportive Services

Supportive Services Plan:

*Only **one** specific and comprehensive plan should be submitted, regardless of the nature of the tenants targeted for the supportive housing units. (If you are proposing to serve diverse populations (i.e. individuals with mental illness, developmental disabilities, homeless), you must address the service distinctions designed to meet their unique needs.)*

Lead Agency Experience:

Provide a brief description of the experience of the local lead agency and their capacity to provide access to supportive services. Also include how the lead agency will coordinate relationships with the management agent and community service providers, especially in the area of tenant problem resolution or eviction avoidance, for the duration of the compliance period. _____

Supportive Service Coordination:

On-site service coordination must be available to all supportive housing tenants. This may be provided through a partnership with the local service organizations, the following schedule serves as a minimum standard. Additional on-site services may be needed depending on the population served by the supportive housing project.

- a. One day per week – projects of 30 units or less
- b. Two days per week – projects 30-60 units

To receive additional points, projects must provide additional on-site services as follows:

- a. Two days per week – projects of 30 units or less
- b. Four days per week – projects of 31 - 60 units
- c. Five days per week – projects of 61 units or larger

Describe how the project will meet the supportive service needs of the targeted tenants. Include how many hours of on-site services will be provided and attach documentation of a funding commitment from the agency(s) that will provide staff for these services. _____

Supportive Employment

Projects that agree to provide job-training opportunities in the building trades, operation, and/or supportive service programs to individuals who meet the supportive housing tenant definition will receive points. This must be outlined in the Supportive Service Plan and the employment of tenants must be related to the supportive housing development. An example would be the management company employing tenants to work at the site.

Housing First Model

Points will be awarded to supportive housing projects that integrate a Housing First approach that eliminates or minimizes barriers to obtaining housing, for the following deeply targeted populations:

- Frequent Users: This must demonstrate a model that is collaboratively meeting the needs of the community to reduce the high costs of current system usage such as emergency rooms, police and emergency response systems and other community funded services.
- Vulnerable Populations -- This must be demonstrated through the use of assessment tools that identify and prioritize the referrals to serve the most vulnerable

To receive points a detailed description of the Housing First model for this development must be included:

H. Experienced Supportive Housing Development Team

Points will be awarded to a development team that has experience with 50 units of supportive housing as follows:

- a. Developer owns and operates 50 units or more of supportive housing
- b. Management Company has experience managing 50 units of supportive housing
- c. Lead Agency has experience providing services for 50 units of supportive housing

List the name of development and total number of supportive housing units below or attach a separate sheet with this information.

	Development Name	Number of PSH Units
Sponsor		
Management Company		
Lead Agency		

SUPPORTIVE SERVICES COMMITMENT

Please list only the services that are made available to tenants of this project. Please do not list every service generally available in a community. If service is not available, enter "none".

	Name of Agency Providing Service Must sign MOU	Name of Agency Funding Services Must provide Letter of Support
CASE MANAGEMENT SERVICE COORDINATION		
Tenant Stabilization – Assist tenants to care for their apartment, ADL's, get along with neighbors, landlord, etc.		
Building Support Systems – Assist tenants to re-engage with local community.		
Basic Needs – Assist tenants to obtain resources (food, clothing, transportation, etc).		
Benefit Assistance - Provide on-going support including referrals, assistance obtaining benefits, linkages with services, "whatever it takes".		
Employment Related Services		
OTHER ESSENTIAL SERVICES		
Mental Health – ACT, counseling, therapy, medications and medication management.		
Substance Abuse Services – Outpatient treatment, self-help options, and counseling.		
HIV/AIDS – Specialized health care.		
Legal Services – Related to civil arrears, family law, uncollected benefits.		
Veteran Services		
Domestic Violence Counseling		

	Name of Agency Providing Service <i>Must sign MOU</i>	Name of Agency Funding Services <i>Must provide Letter of Support</i>
Child Care		
School Related Services		
Other		

I. Summary of How the Project is “grounded” in Community Collaboration

It is the desire and intent that supportive housing projects NOT occur in isolation or without the knowledge and support of the community in which the development is proposed.

How does this project support the local Ten Year Plan to End Homelessness?
Do not attach a copy of the Ten Year Plan as evidence of this collaboration.

If this project is NOT related to the local Ten Year Plan to End Homelessness, discuss how it is grounded in any other relevant collaborative community strategy or plan.

ATTACHMENT A

DEFINITIONS

ELIGIBLE SUPPORTIVE HOUSING TENANTS SUPPORTIVE SERVICE PLAN SINGLE ROOM OCCUPANCY (SRO)

Please review the following definitions before completing a service plan for Supportive Housing Tenants. This is relevant when applying for any MSHDA program, including HOME or Low Income Housing Tax Credits. ***To be eligible for funding, the entire housing development must be open and available to adult persons of all ages.***

A. Eligible Special Supportive Housing Tenants

Under the Low Income Housing Tax Credit program eligible supportive housing tenants must meet one of the following definitions (special need, homeless, domestic violence survivor, chronically homeless, youth aging out of foster care or homeless. The homeless and at risk of homelessness definitions are outlined below and are aligned with the HUD definitions approved by Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009. HUD published the final rule in the December 5, 2011 *Federal Register*.

Special Need – A person (prospective tenant) with special needs must be the adult member of the household and meet the criteria in both categories below, **or** the person is a recipient of SSI/SSDI. The tenant must have:

1. A describable “special need condition”, defined as a physical (including profound deafness and legally blind), mental or emotional impairment that is of long-term duration, **and**
2. At the same time, the tenant must have a *substantial and sustained* need for supportive services in order to successfully live independently. In order to meet the “special needs definition,” tenants must require assistance in at least **two** life-skill areas, such as:
 - The ability to independently meet personal care needs;
 - Economic self-sufficiency (capacity for sustained and successful functioning in vocational, learning or employment contexts);
 - Use of language (ability to effectively understand, be understood and handle communication as needed on a daily and ongoing basis);
 - Instrumental living skills (managing money, getting around in the community, grocery shopping, complying with prescription requirements, meal planning and preparation, mobility, etc.), or
 - Self-direction (making decisions/choices about one’s day-to-day activities and regarding one’s future)

At Risk of Homelessness

- Individual and family who:
 - Income below 30% AMI & lacks sufficient resources or support networks
 - Meets one of the following conditions:
 - Moved due to economic reasons 2 or more times during 60 days prior to application for prevention assistance
 - Living in home of another person due to economic hardship
 - Current housing will be terminated within 21 days after application
 - Lives in hotel or motel or SRO or efficiency apt
 - Exiting publicly funded institutions or system of care
 - Lives in housing characteristics associated with instability
- Child or youth who meets other federal homeless definitions
- Child or youth homeless under McKinney-Vento Homeless Education Act and parent(s)/guardian(s) live with them

Chronically Homeless

- An individual or family (with an adult head of household) who is:
 - Homeless & lives in place not meant for human habitation, a safe haven, or in an ES for at least 1 year or 4 occasions in last 3 year (each occasion at least 15 days) and
 - Can be diagnosed with one of more conditions:
 - Substance use disorder, development disability, serious mental illness, PTSD, cognitive impairments from brain injury, or chronic physical illness or disability;
- Individual residing in institutional care fewer than 90 days and were in shelter or a place not meant for human habitation immediately prior to entering that institution.

Homeless – A person/prospective household must meet the following definition of homeless to qualify. The tenant must:

Category 1:

Individual or family who lacks fixed, regular, and adequate nighttime residence and is:

1. An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings
2. Individual or family living in a supervised publicly or privately operated shelter
3. Individual who resided in a shelter or place not meant for human habitation & exiting an institution where he/she temporarily resided
 - The individual must have been homeless prior to entering the institution
“temporarily resided” now means a period of 90 days or less

Category 2:

Individuals or families who will imminently lose their primary nighttime residence provided that:

- Residence will be lost within 14 days of date of application and;
- no other residence is identified & lacks resources or support network to obtain Permanent Housing

Category 3:

Unaccompanied youth under 25 years, or families with children and youth who do not qualify under this definition, but who are defined as homeless under the Runaway and Homeless Youth Act, Head Start Act, Violence Against Women Act, Public Health Services Act, Food and Nutrition Act, Child Nutrition Act and

Must meet all 3 eligibility criteria:

1. Have not had a lease, ownership interest, occupancy agreement in permanent Housing ("PH") during the 60 days prior to application
2. Experience persistent instability – 2 or more moves during 60 days prior to application
3. Expected to continue in such status for an extended period of time because of:
 - chronic disabilities, physical or mental health conditions, substance addiction, history of domestic violence or childhood abuse, presence of a child or youth with disability, OR
 - two or more barriers to employment
 - Lack of high school degree or GED, illiteracy, low English proficiency, history of incarceration, detention for criminal activity, history of unstable employment

Category 4:

- Any individual/family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or have made the individual or family afraid to return to their primary nighttime residence and
- Has no other residence and
- Lacks the resources or support networks to obtain other permanent housing

B. Supportive Services Plan

For a project to be eligible for tax credit supportive housing points or HOME funds, the proposal must include a plan for the provision of a *substantial level of services targeted* to the supportive housing units. The services must include those that are essential for supportive housing tenants to *sustain* themselves in permanent housing.

The project must be an on-going active collaboration between the owner, Management Company, and identified supportive service provider(s). The formulation of this relationship, along with a commitment to sustain the agreed upon services over a period of time, must be agreed to *by the collaborators and incorporated into a written "Memorandum of Understanding."*

The supportive services plan should outline and specify the following:

- Conditions which would qualify the proposed tenant(s) for the supportive housing units;
- Expected life-skills areas for which supportive services are likely to be required;
- The supportive services to be provided. **Participation in supportive services must be voluntary unless required by a Federal rental subsidy.**
- How service coordination will be provided.

Tenants' must have the option to receive service coordination on-site. For the purpose of meeting this requirement, *service coordination* shall be available in a form that contains the following elements:

- a. An individual assessment of service needs and life goals will be completed with the full participation of each tenant and others of their choosing.
- b. A plan will be developed in response to each tenant's assessment, which will include long and short-range goals, with specific steps to achieve them. Principles of person centered planning and self-determination will be incorporated into the planning process.
- c. Service coordination will include advocacy, brokering, linking and monitoring of support services detailed in each tenant's plan.
- d. Service coordinators will help tenants gain access to entitlements, financial assistance programs, and legal representation, in accordance with the tenant's plan.
- e. A re-assessment, and revision of each tenant's plan, will be completed on at least an annual basis. Copies of that plan and annual update will be placed in each tenant's file.
- f. Tenants shall have a designated individual or team responsible for the coordination of services.
- g. Emphasis shall be placed on tenant empowerment and the development of natural/community supports.

C. Single Room Occupancy (SRO)

An SRO is defined as a residential property that includes multiple efficiency dwelling units. Each unit is for occupancy by a single eligible individual. The dwelling unit must contain private sanitary facilities and an appropriate food preparation area which includes sink, microwave, refrigerator, and counter for food preparation.

2012-2013 Qualified Allocation Plan and Related Laws and Rules

Housing Tax Credit Program



§50.1. General Program Information.

- (a) **Purpose and Authority.** The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits authorized by applicable federal income tax laws. Pursuant to Chapter 2306, Subchapter DD, of the Texas Government Code, the Department is authorized to make Housing Tax Credit Allocations for the State of Texas. As required by §42(m)(1) of the Code, the Department developed this Qualified Allocation Plan (QAP) which is set forth in this chapter. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper Threshold Criteria, Selection Criteria, priorities and preferences are followed in making such allocations. Notwithstanding the fact that these rules may not contemplate unforeseen situations that may arise, the Department would expect to apply a reasonableness standard to the evaluation of Applications for Housing Tax Credits.
- (b) **General Rule of Construction.** Any requirement to meet code, ordinance, etc. is deemed to be met if an appropriate waiver has been lawfully obtained and is being met.
- (c) Unless the context indicates otherwise, a reference to a Development Owner, Developer, General Contractor or Guarantor includes all Persons controlled by or under common Control with any such Person.

§50.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Chapter 2306 of the Texas Government Code, §42 of the Internal Revenue Code, §1.1 of this title (relating to Definitions and Amenities for Housing Program Activities), and repeated in the Tax Credit (Procedures) Manual.

- (1) **Applicable Percentage--**The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as defined more fully in the Code, §42(b).
 - (A) For purposes of the Application, the Applicable Percentage will be projected at:
 - (i) nine percent (9%) if the Development is proposed to be placed in service prior to December 31, 2013 and such timing is deemed appropriate by the Department or if the ability to claim the full 9% credit is extended by the U.S. Congress;
 - (ii) forty (40) basis points over the current applicable percentage for 70% present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or
 - (iii) fifteen (15) basis points over the current applicable percentage for 30% present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.
 - (B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:
 - (i) the percentage indicated in the Agreement and Election Statement, if executed; or
 - (ii) the actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or
 - (iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

- (2) **Application Acceptance Period**--That period of time during which Applications may be submitted to the Department.
- (3) **Area Median Gross Income (AMGI)**--Area median gross household income, as determined for all purposes under and in accordance with the requirements of §42 of the Code.
- (4) **Carryover Allocation**--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and U.S. Treasury Regulations, §1.42-6.
- (5) **Carryover Allocation Document**--A document issued by the Department, and executed by the Development Owner, pursuant to §50.12(e) of this chapter (relating to Post Award Activities).
- (6) **Certificate of Reservation**--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.
- (7) **Central Business District or Downtown District**--The area designated by a city with a population of 50,000 or more as that city's Central Business District or Downtown Area and which includes one or more commercial buildings of ten (10) stories or more.
- (8) **Code**--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).
- (9) **Competitive Housing Tax Credits**--Tax credits available from the State Housing Credit Ceiling.
- (10) **Determination Notice**--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.
- (11) **Development Site**--The area, or if scattered site, areas, on which the Development is proposed to be located.
- (12) **Economically Distressed Area**--A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code, and has adopted and enforces the model rules under §16.343, Texas Water Code.
- (13) **Eligible Basis**--With respect to a building within a Development, the building's Eligible Basis pursuant to §42(d) of the Code.
- (14) **Existing Residential Development**--Any Development Site which contains existing residential Units at the time the Application is submitted to the Department.
- (15) **High Opportunity Area**--A Development that is proposed to be located in an area that includes, at a minimum, subparagraphs (A) and (B) of this paragraph along with either subparagraph (C) or (D) of this paragraph:
 - (A) in a census tract which has a median income that is above median for that county (as designated in the Housing Tax Credit Site Demographic Characteristics Report for the current Application Round) as of the first day of the Application Acceptance Period; and
 - (B) in a census tract that has a 15% or less poverty rate (as designated in the Housing Tax Credit Site Demographic Characteristics Report for the current Application Round) or, for Regions 11 and 13 with a 35% or less poverty rate;

- (C) within a half-mile of an accessible transit stop for public transportation if such transportation is available in the municipality or county in which the Development is located; or
 - (D) in an elementary school attendance zone that has an academic rating, as of the beginning of the Application Acceptance Period, of "Exemplary" or "Recognized," or comparable rating if the rating system changes by the same date as determined by the Texas Education Agency. An elementary attendance zone does not include elementary schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, districts with district-wide enrollment and only one elementary school are acceptable.
- (16) **Housing Credit Allocation**--An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this chapter.
 - (17) **Housing Credit Allocation Amount**--With respect to a Development or a building within a Development, the amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period which the Board allocates to the Development.
 - (18) **Qualified Nonprofit Organization**--An organization that meets the requirements of §2306.6706 and §2306.6729 of the Texas Government Code.
 - (19) **Qualified Nonprofit Development**--A Development in which a Qualified Nonprofit Organization is to own an interest in the Development directly or through a partnership and materially participate (within the meaning of §469(h) of the Code) in the development and operation of the Development throughout the Compliance Period.
 - (20) **Single Room Occupancy (SRO)**--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.
 - (21) **State Housing Credit Ceiling**--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code.
 - (22) **Supportive Housing**--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are expected to be debt free or have no foreclosable or noncash flow debt. The services offered generally address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.
 - (23) **Target Population**--For purposes of this Qualified Allocation Plan, the designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.
 - (24) **Tax Credit (Procedures) Manual**--The manual produced and amended from time to time by the Department which reiterates the rules and provides guidance for the filing of tax credit related documents.

- (iii) for Developments which require a capital needs assessment from TRDO-USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §1.36 of this title.
- (D) **An appraisal report (required for Rehabilitation Developments and Identity of Interest transactions pursuant to §1.34 of this title):**
 - (i) dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than twelve (12) months old as of the first day of the Application Acceptance Period;
 - (ii) prepared in accordance with the §1.34 of this title; and
 - (iii) for Developments that require an appraisal from TRDO-USDA, the appraisal may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing appraisal is still acceptable.
- (E) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.
- (F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

§50.9. Selection Criteria.

- (a) The purpose of this section is to identify the scoring criteria used in evaluating and ranking Applications submitted under the State Housing Credit Ceiling. The criteria identified below include those items required under Chapter 2306 of the Texas Government Code, §42 of the Internal Revenue Code and other criteria considered important by the Department.
- (b) All Applications, with the exception of TRDO-USDA Applications, must receive a final score totaling a minimum of 130, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Unless otherwise stated, do not round calculations.
 - (1) **Financial Feasibility.** (§2306.6710(b)(1)(A)) Applications may qualify to receive a maximum of (28 points) for this item. The purpose of this scoring item, as the highest prioritized item under Chapter 2306 of the Texas Government Code, is to provide an incentive for Applications based on the financial feasibility of the Development based on the supporting financial data as required in the Application. Receipt of feasibility points under this paragraph does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division, and, conversely, a Development

may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive all possible points under this paragraph. To qualify for the points, the supporting financial data in the Application must include:

- (A) a fifteen (15) year pro forma prepared by the permanent or construction lender:
 - (i) specifically identifying each of the first five (5) years and every fifth year thereafter;
 - (ii) specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and
 - (iii) indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen (15) years proposed for all third party lenders that require scheduled repayment; and
 - (B) a statement in the term sheet, or other form deemed acceptable by the Department, indicating that the lender's assessment, based on considerations that included the Development's underwriting pro forma, finds that the Development will be feasible for fifteen (15) years.
 - (C) For Developments maintaining existing financing from TRDO-USDA, a current note balance must be provided or other form of documentation of the existing loan deemed acceptable by the Department to meet the requirements of this section.
- (2) **Quantifiable Community Participation.** (§2306.6710(b)(1)(B); §2306.6725(a)(2)) The purpose of this scoring item is to encourage community participation from Neighborhood Organizations whose boundaries contain the proposed Development Site with consideration for those areas that may not have any Neighborhood Organizations. Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development Site. It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under §50.8(9) of this chapter (relating to Threshold Criteria) if the organization provides the information and documentation required in subparagraphs (A) and (B) of this paragraph. It is also possible that Neighborhood Organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring. If an organization is determined not to be qualified under this paragraph, the organization may qualify under paragraph (13)(B) of this subsection and will be reviewed by Staff accordingly even if points under paragraph (13)(B) of this subsection were not selected in the Self-Scoring Form. If an Application receives points under subparagraph (B)(i)(II) or (III) of this paragraph then they may also qualify for points under paragraph (13)(B) of this subsection provided that documentation required under that scoring item is submitted.
- (A) **Submission Requirements.** Each Neighborhood Organization may submit the form as included in the QCP Neighborhood Information Packet that represents the organization's input. In order to receive a point score, the form must be received, by the Department, or postmarked, if mailed by the U.S. Postal Service, no later than the Quantifiable Community Participation Delivery Date as identified in §50.3 of this chapter (relating to Program Calendar). Forms received after the deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The form must:
 - (i) state the name and location of the proposed single Development;
 - (ii) certify that the letter is signed by two officials or board members of the Neighborhood Organization with the authority to sign on behalf of the Neighborhood Organization, and include:
 - (I) the street and/or mailing addressee(s) for the signers of the letter;

- (II) day and evening phone number(s) for the signers of the letter;
 - (III) email addresses and/or facsimile number(s) for the signers of the letter and one additional contact for the organization; and
 - (IV) a written description and map of the organization's geographical boundaries;
- (iii) certify that the organization has boundaries, and that the boundaries in effect on or before the Full Application Delivery Date identified in §50.3 of this chapter contain the proposed Development Site;
 - (iv) certify that the organization meets the definition of "Neighborhood Organization"; defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood (§2306.004(23-a)). For purposes of this section, "persons living near one another" means two or more separate residential households. "Neighborhood Organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or Reconstruction of the property occupied by the residents. "Neighborhood Organizations" do not include broader based "community" organizations;
 - (v) include documentation showing that the organization is on record as of the Full Application Delivery Date with the state or the county in which the Development is proposed to be located. The receipt of the QCP form that meets the requirements of this subsection and further outlined in the QCP Neighborhood Information Packet will constitute being on record with the State. The Department is permitted to issue an Administrative Deficiency notice for this registration process and, if satisfied, the organization will still be deemed to be timely placed on record with the state;
 - (vi) a Neighborhood Organization must provide notice, of at least seventy-two (72) hours, to persons eligible to join or participate in the affairs of the organization.
 - (vii) while a formal meeting is not required, the organization is encouraged to hold a meeting, that complies with its bylaws, to which all the members of the organization are invited to consider and/or have a membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to meet with the Developer or Applicant to discuss the proposed Development; and
 - (viii) the form from the Neighborhood Organization for the purposes of this subsection must be submitted to the Department by the Neighborhood Organization and not the Applicant. This documentation must be submitted independent of the Application. Furthermore, while the Applicant may assist the Neighborhood Organization in the Administrative Deficiency process or any other request from the Department as it relates to this item, the Administrative Deficiency Notice from the Department will be issued to the Neighborhood Organization with a copy to the Applicant; however, the Deficiency response must be submitted to the Department directly by the Neighborhood Organization.
- (B) Scoring. The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.
- (i) The score awarded for each letter for this exhibit will be based on the following:
 - (I) support letters will receive (24 points). Support letters must make a direct statement of support. Support by inference (i.e. "The city supports the Development and we support the city" will not suffice; or

- (B) The Development is proposed to be located in a Central Business District as defined in §50.2(7) of this chapter. The Application must include a letter from the Appropriate Local Official confirming the location of the proposed Development and include the boundaries of the Central Business District (4 points).
 - (C) A Federal Enterprise Community, a Growth Zone or any other comparable community as designated by HUD, which are typically defined with census tract boundaries. Such locations may have previously been known as Empowerment Zones, Enterprise Communities or Renewal Communities (1 point); or
 - (D) An Economically Distressed Area as specifically designated by the Water Development Board as of the beginning of the Application Acceptance Period or a Colonia (1 point); or
 - (E) The Application is not receiving points under paragraph (5) of this subsection and the proposed Development will be located in an area supported by the Governing Body of the appropriate municipality or county containing the Development Site, as evidenced by a resolution or ordinance, submitted with the Application, supporting the location of the Development Site (1 point).
- (17) **Tenant Populations with Special Housing Needs.** (§42(m)(1)(C)(v)) Applications may qualify to receive (4 points) for this item. The purpose of this scoring item is to integrate special housing needs populations into traditional housing tax credit Developments. The Department will award these points to Applications in which at least 5% of the Units are set aside for Persons with Special Needs. For purposes of this section, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. The twelve-month period will begin on the date each building receives its Certificate of Occupancy. For buildings that do not receive a Certificate of Occupancy, the twelve-month period will begin on the placed in service date as provided in the Cost Certification manual. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.
- (18) **Length of Affordability Period.** (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) The purpose of this scoring item is to provide an incentive for Applications that will extend the affordability period beyond the extended use period. Rehabilitation (excluding Reconstruction) Developments are not eligible for these points. Applications may qualify to receive up to (4 points). In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the thirty (30) years required in the Code may receive points as follows:
- (A) add five (5) years of affordability after the extended use period for a total affordability period of thirty-five (35) years (2 points); or
 - (B) add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (4 points).
- (19) **Site Characteristics.** Development Sites, including scattered sites, may qualify to receive up to (4 points) for this item. The purpose of this scoring item is to encourage affordable rental housing development in proximity to services and amenities that would be considered

Examples of policies that address issues faced by victims of domestic violence

1. Good cause for eviction does not include domestic violence
 - a. Pennsylvania
2. Requesting a change in family composition
 - a. Montana
3. Married and living apart, which may include proving separation from abuser
 - a. Mississippi,
 - b. Michigan
 - c. Oregon

Approved by the Board September 13, 2012

**PENNSYLVANIA HOUSING FINANCE AGENCY
ALLOCATION PLAN FOR YEAR 2013
LOW INCOME HOUSING TAX CREDIT PROGRAM**

PROCESSING OVERVIEW AND PROCEDURES FOR 2013

The Pennsylvania Housing Finance Agency (the "Agency") administers the Federal Low Income Housing Tax Credit Program ("Tax Credit Program") in the Commonwealth of Pennsylvania. Pursuant to federal law governing the Tax Credit Program, each year, the Agency adopts a plan (the "Allocation Plan") outlining the allocation priorities and procedures to be followed in distributing Federal Low Income Housing Tax Credits ("Tax Credits") based on the housing needs of the Commonwealth. Adoption of the Allocation Plan requires approval by the Governor after a public hearing.

For 2013, the Agency has changed the manner in which it allocates Tax Credits throughout the Commonwealth and will be awarding Tax Credits to eligible Applications based on certain preferences in Urban and Suburban/Rural locations. The Selection Criteria has been amended to reflect specific needs and market conditions which may differ based on type of property, targeted populations and housing needs.

The Agency will provide supplemental policy and guideline announcements throughout the 2013 year affecting this Allocation Plan. Please refer to the Agency's website at www.phfa.org.

SUBMISSION REQUIREMENTS

All information submitted by the applicant or requested by the Agency in the review of the Application is the sole property of the Agency and may be made public. The Agency's processing procedures, fee schedules and limitations, and current rent and income limits are set forth in the Agency's 2013 Multifamily Housing Application Package and 2013 Multifamily Housing Program Guidelines (the "2013 Guidelines"), which will be available on the Agency's website at www.phfa.org, and may be amended from time to time. It is the applicant's responsibility to be familiar and compliant with all Tax Credit Program requirements, the regulations, and the Internal Revenue Code (the "Code"), both in effect now and in the future, as applicable to any Application in this program.

For a development to be considered for a reservation of Tax Credits, the entire Application package, including all exhibits, must be received by the Agency no later than **3:00 p.m.** of the closing date of one of the submission cycles listed below (**or such other deadline as may be established by the Agency on its website**). Applications not received by the closing date of the submission cycle will not be considered. The Agency will evaluate the Applications based upon the requirements set forth herein and may request additional information from Applicants at any time during the processing of an Application in its discretion. The Agency will strive to notify applicants in Cycle 1 of the applicant's status after its March 2013 Board meeting and will strive to notify applicants in Cycle 2 of the applicant's status after its July 2013 Board meeting. Applications for additional credits will be accepted in either cycle, and awarded on a first-come, first-served basis to feasible applications until the Additional Credit Set-Aside is depleted.

DEVELOPMENTS WITH MULTIPLE BUILDINGS

A development may include multiple buildings if it has similarly constructed units, is located on the same or contiguous tracts of land, is owned by the same federal taxpayer and is financed pursuant to a common plan of financing. A development with multiple buildings that is proposing a mixed income structure must have low-income units in each building of the development. Scattered site buildings on noncontiguous tracts of land may also qualify if the development meets all of the other requirements described above and the development is 100 percent rent and income restricted, however, costs associated with the development of a separate community building may not be eligible for Tax Credits unless the building contains a residential rental unit.

COMPLIANCE

Owners are responsible for ongoing compliance with all requirements of the Code and the Agency's Compliance Program Manual, including such rules, regulations, administrative revenue proclamations and revenue rulings as may be issued from time to time.

Each owner of a Tax Credit development must execute an agreement setting forth allowable occupancy and use restrictions, owner responsibilities and continuing Section 42 qualified development characteristics. This agreement, the "Restrictive Covenant Agreement," must be recorded for the maximum period required by the Code and no Tax Credits may be claimed by a property owner in any taxable year unless the Restrictive Covenant Agreement is in effect and is appropriately recorded on the property in the county land records.

The Agency will monitor each Tax Credit development for compliance with the Code. Such requirements may change from time to time and the protocol for compliance monitoring may be adjusted as deemed necessary or appropriate by the Agency. In addition to monitoring for all federal requirements, developments will be monitored for compliance with the occupancy standards, Selection Criteria and other covenants set forth in the Restrictive Covenant Agreement. A form authorizing the release of compliance information is on the Agency's website, www.phfa.org. However, the Agency may release related information even if no release form is submitted.

The Agency has established an interactive database ("PA Housing Search") for all affordable housing units in developments participating in any of the Agency's multifamily housing programs, to provide a resource for households seeking affordable housing throughout the Commonwealth and to provide a marketing tool to owners. All developments receiving 2013 Tax Credits must participate in this data collection effort and will be expected to provide information including, but not limited to unit amenities, household size, household income and move-in information and any ongoing unit vacancies in a secure and timely manner. Owners are reminded that they must comply with the Agency's Accessible Unit Policy (see 2013 Guidelines).

All owners must keep the following records for each qualified low income building in the development for each year of the compliance period: number of residential units in the building, the number of low income units in building, the number of occupants in each low income unit, the number of bedrooms in each unit, the square footage of each unit, the rent charged on each unit including the utility allowance, the low income unit vacancies in the building and the rentals of the next available unit for each building in the development including when and to whom it was rented. The owner must also keep documentation of the eligible basis and the qualified basis of the building as of the end of the first year of the Tax Credit period. Owners must also keep a record of the annual income certification of low income residents along with documentation to support the certification. (Effective January 1, 2009, Owners with 100% of the units qualified as Tax Credit units do not have to provide annual income certifications but must provide updates on household composition, student status and rent on the Agency's on-line

compliance reporting system. In addition, subsequent data collection efforts may be applicable to the Development and each Owner must agree in advance to participate in these data collection initiatives.) Owners renting to holders of Section 8 certificates or vouchers may ask the public housing authority issuing the certificates or vouchers to provide a statement declaring that the resident's income does not exceed the applicable income limit under the Code. Any nonresidential portion of a building included in the eligible basis of the building must demonstrate its availability to all residents in the building at no additional cost to the residents.

Records for the first year of the Tax Credit period 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 all subsequent years of the Tax Credit period, records must be kept by property owners for a minimum of 6 years after the due date (with extensions) for filing the federal income tax return for the year.

The Agency will also review and monitor developments for compliance with required certification submissions. Owners must provide certification at least annually to the Agency, under penalty of perjury, through the Agency's on-line compliance reporting system, as to the following: the development meets the requirements of the elected minimum set-aside test; the applicable fraction, as defined in Section 42(c)(1)(B) of the Code, of each building in the development has not changed, or, if there was a change, a description of the change; owner has received the annual income certification from each low income resident along with supporting documentation; the low income unit is rent restricted under Section 42(g)(2) of the Code; all units are available to the general public and used on a non-transient basis and no finding of discrimination under the Fair Housing Act has occurred for the development; each building is suitable for occupancy pursuant to local health, safety and building codes and meets all habitability standards for the Tax Credit Program; the building's eligible basis pursuant to Section 42(d) of the Code has remained the same (or if there was a change, the nature of the change); and any resident facility in the building is available to all residents in the building on a comparable basis without a separate fee charged to the resident. Furthermore, owners must certify that no low-income resident of a Tax Credit property will be or has been evicted or otherwise had their lease terminated other than for good cause and owner must confirm that all leases state this affirmatively. Experience as of victim of domestic violence alone may not constitute good cause for eviction under the terms of the lease. Owner must also certify that if a low income unit becomes vacant, reasonable attempts will be made to rent that unit to a qualified low income resident, and while that unit is vacant no units of comparable or smaller size may be rented to a non-qualified low income resident. If a low income resident's income rises above the limit established in Section 42(g)(2)(D)(ii) of the Code, all available units of comparable or smaller size in that building must be rented to an income qualified resident. Owner must also certify that an extended low income housing commitment, as described in Section 42(h)(6) of the Code, was in effect for all qualified low income buildings in the development. Owner must also certify that a unit lease has not been refused to a Section 8 applicant because the applicant holds a Section 8 voucher or certificate. Owner's certifications of these items must be submitted at least annually or with such greater frequency as may be required by the Agency. The Agency may adjust any and all of its compliance protocols as it deems appropriate throughout the compliance period and the extended use term covered by the Restrictive Covenant Agreement.

The Agency may review the information set forth on the certifications at any time for compliance with the Code. On-site inspections of all Tax Credit developments will be held from time to time, at the sole discretion of the Agency, for compliance with the certification requirements, habitability standards, rent records, lease provisions, supporting documentation and all record keeping requirements in the low income units. Physical inspections of all buildings and at least 20% of all low income units are performed at least once every three years. The Agency will determine which developments and which records it will inspect and how often such inspections will be conducted in its discretion. The Agency retains the right to perform on-site inspections at any time during the compliance period for any Tax

Credit development or to conduct more frequent or more detailed site visits if the Agency deems it appropriate. As referenced above, the Agency may also require submission of ongoing data from each property regarding move-ins and vacant units.

Audited financial statements must be submitted annually to the Agency's Compliance Monitoring Department for all properties with twenty (20) or more units. If audited financial statements are not available, a compilation must be prepared and submitted to the Agency's Compliance Monitoring Department. (Applications for Tax Credits in any year may be rejected from organizations or individuals who have not submitted to the Agency the audited financial statements for a Tax Credit development for the preceding tax year.)

As required by the IRS, in the event the owner or the development does not comply with any of the provisions of the Code, the Agency will provide written notice to the owner that specifies a correction period that may not exceed 90 days, unless extended by the Agency in writing. Upon the expiration of the correction period set forth in the written notice to the owner, the Agency must file IRS Form 8823 "Low Income Housing Credit Agency Report of Noncompliance" ("IRS Form 8823") with the IRS to advise the IRS of the existence of an event of noncompliance with an explanation of the nature of the event and whether the owner has corrected the noncompliance. Any change in either the applicable fraction or eligible basis resulting in a decrease in the qualified basis will be treated as an event of noncompliance. In addition, any failure to provide required information to the Agency on a timely basis in accordance with its written request or the procedures established in Agency directives or set forth in its Compliance Program Manual may be treated as an event of noncompliance and may result in the filing of IRS Form 8823. Failure to continually meet the requirements of the use, occupancy and other conditions relevant to the operation of the development, as set forth in the Restrictive Covenant Agreement, may be treated as an event of noncompliance and may result in the filing of IRS Form 8823.

The Agency will assess owners an upfront compliance fee designed to cover administrative expenses associated with the performance of compliance monitoring. Additional fees may be charged, as necessary and appropriate, for any property.

The Housing and Economic Recovery Act (HERA) of 2008 requires each state Credit allocating agency to provide HUD with information on the race, ethnicity, family composition, age, income, use of federal rental assistance, disability status, and monthly rental payments of households residing in each property receiving Housing Credits. All developments receiving Tax Credits must participate in this data collection effort and will be expected to provide the required information in the form, manner and timeframe required by the Agency.

2010

Low Income Housing Tax Credit



Montana Board of Housing
Compliance Manual

10/1/2010

HOUSEHOLD COMPOSITION

At time of lease-up of the unit the Owner needs to do everything possible to ensure everyone who intends to live in the unit is qualified and named on the lease. It is permissible for the management to allow additional person(s) to move into the unit after initial move-in but care should be taken to make sure that the additional tenants were not left out of the initial move-in because of potential qualification issues.

In general, no changes to a qualified household should be made within the first six months of the household’s lease. This applies to adults only – minor’s and/Live-in Aides may be added to the household at any time. Montana Board of Housing strongly suggests that Owners have a policy in place regarding additions to the household that take place within six (6) months of the initial occupancy of the unit.

ANTICIPATED CHILDREN

For the purpose of assigning unit size to a household, the Owner should count all children anticipated in the next 12 months to be:

- ▶ Born to a pregnant woman
- ▶ Adopted
- ▶ Coming into the home through foster care
- ▶ Whose custody is being obtained by an adult household member
- ▶ Present in the household 50% of the year through a joint-custody agreement
- ▶ Children who are away at school but who reside with the household during the school recesses

LIVE-IN AIDES

Relatives may be considered live-in aides; however they must meet the above requirements, particularly the last one. A live-in aide qualifies for occupancy only as long as the resident needing supportive services remains qualified and requires the aide’s services. A live-in aide never qualifies as a remaining family member who can continue to live in the unit after the resident moves out. A live-in aide count toward the determination of unit size for the household, but their income is excluded from the household income certification, and they are not included on the lease. A live-in aide cannot have their family members living with them in the unit.

VICTIMS OF DOMESTIC VIOLENCE

A change to the household may be requested at any time by a victim of domestic violence. Under the Landlord-Tenant Act, a domestic violence victim can get out of a lease early, and has the right to be free from discrimination by a landlord when entering into or renewing a lease. For more information on this issue, consult with your attorney and review the residential Landlord-Tenant Act.

NEW HOUSEHOLD MEMBER

Changes in the size of an existing household after the initial tenant income certification must be addressed. A New Household Member Tenant Income Certification must be

2012

Revised January 2012

MISSISSIPPI HOME
CORPORATION

[HOUSING CREDIT COMPLIANCE MONITORING PLAN]

This Plan is designed to provide a basic description and explanation of the rules and regulations of the Housing Credit program as it relates to developments receiving an allocation of credits in the state of Mississippi pursuant to Section 42 of the Internal Revenue Code.

process of being obtained, must count said household member in accordance with HUD 4350.3 rules pertaining to foster children.⁴³

In order to count a child(ren) who is under the age of 18 and not an emancipated minor as a household member for income-eligibility purposes, the HTC unit must be the child's permanent residence **and** another member of the household (as listed on the lease agreement) must meet one of the following criteria:

1. Have legal custody or guardianship of the child(ren) (as evidenced by court papers);
2. Have claimed the child(ren) as a dependent on the most recently filed tax return (as evidenced by the tax return) and anticipate claiming the child as a dependent for the present certification period; or
3. Adoption in progress (as evidenced by court papers).

It is not necessary for an owner/manager to document custody or guardianship of children who reside in the unit with a parent unless there is reason to believe that the child(ren) is(are) not eligible to be counted as a household member (i.e., child does not reside in unit at least 50% of the time).

Married Individuals Living Apart (Estranged)

A prospective resident(s) who is(are) married persons but does not plan to reside with his/her spouse must, in the absence of support documentation of the spouse's permanent absence, consider the spouse a temporarily absent family member. To the same, all income associated with said member must be included as part of the household's income unless documentation evidencing a permanent separation is acquired. Examples of sufficient evidentiary documentation include:

1. Divorce filing or legal separation documents
2. Documentation from an attorney or legal aid office indicating that the prospective resident/tenant filed, is pursuing or has inquired about a divorce or legal separation;
3. Copy of legal restraining order or documentation that prospective resident has experienced domestic violence
4. A statement from a person who provided counseling to the tenant in an official capacity as part of his or her occupation (i.e, attorney, therapist, marriage counselor, etc.) indicating the separation (in his or her opinion) is permanent; or
5. Legal or official documents (i.e., tax return) indicating separate residency.

⁴³ *Non-custodial children are a topic that is not specifically addressed the HUD Handbook 4350.3. In light of such, non-custodial children should be treated as a foster child, including any associated income.*

In either instance (spouse treated as temporarily absent or permanently absent), a notarized *Affidavit of Marital Separation Status* form must be acquired from the associated household member attesting to the same and maintained in the household's HTC eligibility file.

Who does NOT count as a household member?

Verified live-in aides, nurses or attendants, absent children (less than 18 years of age who will be in the unit less than 50% of the time), and verified foster children or foster adults do not count as a household member for purposes of determining HTC eligibility.

Live-In Aide

A live-in aide is a person who resides with one or more elderly, near elderly, or disabled person(s) (1) for the essential care and well being of the tenant, (2) not financially obligated to support the tenant, and (3) certify that he/she would not be living in the unit except to provide the necessary supportive services. In conjunction with the same, a live-in aide should not be counted as a household member for income eligibility purposes. While some family members may qualify as a live-in aide, a spouse (ex-spouse) can never qualify as he/she would not meet qualification guidelines.

Foster Child/Adult

Foster children/adults living in a tax credit unit are not considered a household member for purposes of determining income eligibility. However, in accordance with HUD Handbook 4350.3 Change 3, the earned and unearned income received by a foster adult and the unearned income received by a foster child must be included in the calculation of total household income.⁴⁴ This requirement applies although a foster child/adult is not considered members of the household for determining income eligibility.

NOTE: When applicable, the name and relationship of verified live-in aides and foster children and/or foster adults must be listed on the TIC form with support documentation in the file.

2. Full-Time Student Status

Before making a determination that a household is eligible to reside in a tax credit unit (regardless of income eligibility), an owner must ascertain whether the prospective family is comprised entirely of full-time students. If the household IS comprised entirely of full-time students, the owner must determine if the household is eligible under tax credit student

⁴⁴ Payment received by the family for the care of a foster child(ren)/adult are not counted. Rule applies only to payments made through official foster care relationships with local welfare agencies.



TAB W

LIHTC Policy Bulletins

**Allocation Policy 7 Updated
July 3, 2012**

**Compliance Policy 1 Updated
February 7, 2013**

**Fee Schedule Updated
October 26, 2011**



MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

Low Income Housing Tax Credit Program

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FEE SCHEDULE

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MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
Compliance Monitoring Section

POLICY STATEMENT

MARRIED INDIVIDUALS LIVING APART

This policy statement is to clarify the treatment of prospective tenants of Low Income Housing Tax Credit (LIHTC) projects who are married persons but who do not plan to reside with a spouse. In some situations, the income of the prospective resident alone may be within LIHTC guidelines, but with the inclusion of the absent spouse's earnings, the household would be ineligible to reside in a restricted unit. The determination of annual income must be made in a manner consistent with the Department of Housing and Urban Development (HUD) Section 8 guidelines in HUD Handbook 4350.3. The HUD Handbook does not specifically address marital separations, however, it does state the following:

1. Spouses are counted as family members [Figure 3-6, Page 3-56]; and
2. The head, spouse, and co-head must always be listed on the 59 Data Requirements, even if they are temporarily absent [Part 3-10a(3), Page 3-15].
3. All amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member;

The HUD 4350.3 discusses the following situations, which are somewhat analogous and which involve a marital separation:

- A military spouse is counted as a household member even though absent spouse is not physically residing in the unit. It further states :if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or
- The income of a household member who is confined to a nursing home can be excluded only if that person is permanently absent.

In the absence of documentation that a spouse is permanently absent, the absent spouse should be considered a "Temporarily Absent Family Member" and that spouse's income and assets must be included as part of household income. The income of permanently absent household members would not have to be included as part of household income.

Following is a non-exhaustive list of items that can be used to document that a separation is permanent:

- Divorce filing or legal separation documents
- Documentation from an attorney or legal aid office indicating that the prospective resident/tenant has filed, is pursuing or has inquired about a divorce or legal separation.
- Copy of legal restraining order or documentation that the prospective resident/tenant has experienced domestic violence
- A statement from a person who provided counseling to the tenant in an official capacity as part of his or her occupation (i.e., attorney, therapist, marriage

counselor, clergy) indicating that the separation is permanent. The statement must be sworn or prepared on the counselor's business letterhead.

- A sworn statement from the tenant indicating the following:
 - (a) The spouses operate as separate households and the absent spouse will not reside in the unit; and
 - (b) The separation is permanent.
- Legal or official documents, such as income tax forms indicating two separate residences for the spouses.

ESTRANGEMENT/SEPARATION CERTIFICATION

Applicant/Tenant Name: _____

Unit #: _____

Project Name: _____

Social Security #: _____

THIS FORM TO BE COMPLETED BY APPLICANT/TENANT
--

You have applied for or currently reside in a rental housing unit located in a development operating under the Low- Income Housing Tax Credit (LIHTC) and/or HOME Programs. Provisions of this code require verification of all income and assets, as well as other claims of eligibility. This form is being completed due to the lack of legal action taken to establish estrangement/separation from your spouse. Please provide the information requested below:

1. I am estranged/separated from my spouse.

YES

NO

Full name of spouse: _____

2. If reconciliation occurs, my spouse will **not** be permitted to reside with me in the above-referenced unit unless at least six months have elapsed since the beginning of the initial lease term.

AGREE

DISAGREE

3. If reconciliation occurs prior to the expiration of the six-month time frame cited above, and my spouse wishes to reside with me in the above-referenced unit, our entire household must meet occupancy and income qualifications. If our household does not qualify, I understand that we will be required to vacate the unit.

AGREE

DISAGREE

Under penalty of perjury, I certify that the information presented in this certification is true and accurate to the best of my knowledge. The undersigned further understand(s) that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of a lease agreement.

Signature of Applicant/Tenant

Printed Name of Applicant/Tenant

Date

NOTE: Section 1001 of Title 18 of the U. S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

Examples of comments by advocates

1. Proving separation from abuser
 - a. Oregon
2. Good cause and domestic violence
 - a. Pennsylvania

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
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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 2nd, 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.

Sincerely;

Karen Clearwater, LIHTC Program Representative
Housing Resources Section

Cc: QAP

Memo

To: Interested Parties
From: Mark Schwartz
Date: 10/16/2012
Re: Expanding protections afforded to victims of domestic violence living in Low Income Housing Tax Credit ("LIHTC") housing units

Pennsylvania has approximately 80,000 affordable housing units developed with LIHTCs. All of these units require that no low-income residents be evicted or otherwise had their lease terminated other than for good cause. Owners must certify annually, under the penalty of perjury, their compliance with this requirement.

Many LIHTC leases have provisions which permit the owner to evict a tenant if the police are called to the unit. This can have the unintended consequences of "double victimizing" domestic violence victims. A victim of domestic violence may obtain a protection order, then still be subject to additional abuse at her LIHTC unit. The police may be called by the tenant or neighbors, thus subjecting the abused tenant to possible eviction.

In response to 3 years of advocacy on this issue, the PA Housing Finance Agency's 2013 Qualified Allocation Plan ("QAP") now includes the following language "experience as a victim of domestic violence alone may not constitute good cause for eviction... ". While this language may not be perfect, it is to my knowledge, the first QAP to include such protections.

The advantage to this approach is that in addition to giving a domestic violence victim grounds for challenging an eviction in court as not meeting the good cause requirements for a LIHTC unit, it places at risk the tax benefits available to such owners. According to the Chapter 26-4 of the IRS Audit Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition:

Owners are out of compliance if they fail to certify annually, or certify incompletely or inaccurately, under the penalty of perjury, that for the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause.....

Further, according to the above referenced Audit Guide, the credit agency is to use IRS Form 8823 category 11d to report such non-compliance.

I want to thank Judy Berkman (RHLS) and Rachel Garland (CLS) for their assistance and encouragement with this effort.

Please contact me at (215) 572-7300 ext 107, or mark.schwartz@rhls.org, if you have any questions.



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October 2013

Some examples of LIHTC housing that is targeted to survivors of domestic violence

1. Texas: State agency awarded 2012 tax credits for a development of 164 units, of which 9 are set aside for victims of domestic violence.
2. Iowa: State agency announced awards for 2013 tax credits for two developments for families or victims of domestic violence.
3. NYC: Two tax credit developments (one in the Bronx and another in Brooklyn) have set-asides for victims of domestic violence who are homeless.
4. California: As of July 2011, a tax credit property in southern California leased up a 52-unit building, of which 15 units are for victims of domestic violence.

The attached Department of Treasury, Administration's Fiscal Year 2013 Revenue Proposal could be used to support arguments that a state's QAP should be amended to require that the definition of good cause for eviction include a statement that it is not good cause to evict a tenant due to domestic violence. In addition, this document could be used to support an argument that the protections of VAWA 2013 should be implemented immediately and that Treasury would not object because it is consistent with the FY 2013 proposal to expand the protections of VAWA to LIHTC properties. It is important to note that the FY 2013 Treasury proposal was made prior to the VAWA 2013 amendments.

General Explanations
of the
Administration's Fiscal Year 2013
Revenue Proposals



Department of the Treasury
February 2012

General Explanations of the Administration's Fiscal Year 2013 Revenue Proposals



Department of the Treasury
February 2012

This document is available online at:
<http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2013.pdf>

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REQUIRE LIHTC-SUPPORTED HOUSING TO PROVIDE APPROPRIATE PROTECTIONS TO VICTIMS OF DOMESTIC VIOLENCE

Current Law

Low-income housing tax credits (LIHTCs) support the construction and preservation of a large portion of the nation’s affordable housing for people of limited means. To qualify for LIHTCs, a project must have a minimum fraction of its units that are rent restricted and occupied by low-income individuals (defined as being at or below certain percentages of area median income). (Units that are restricted with respect to the income of their occupants and the rents that can be charged for them are called “low-income” units.)

To ensure that low-income units remain low-income units for many decades, no LIHTCs are allowed with respect to any building for any taxable year unless an extended low income housing commitment (Long-Term Use Agreement, or Agreement) is in effect as of the end of the year. A Long-Term Use Agreement is a contract between the owner of the property and the applicable State housing credit agency. The Agreement must run with the land to bind future owners of the property for three decades or more and must be enforceable in State court not only by the State agency but also by any past, present, or future income-qualified tenant.

In addition to requiring that certain minimum portions of a building be low-income units, the Long-Term Use Agreement must mandate certain conduct in the management of the building—

- The Agreement must prohibit the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of a prospective tenant as such a holder; and
- With respect to any low-income unit, the Agreement must prohibit during the life of the Agreement and for three years after its termination—
 - Any increase in gross rent not otherwise permitted under section 42 of the Code; and
 - Any eviction or other termination of tenancy of any existing tenant (other than for good cause).

Credits are not available unless occupancy is available to the general public. Section 42(g)(9), however, clarifies that a project does not fail to meet this general public use requirement solely because of occupancy restrictions or preferences that favor tenants with special needs, tenants who are members of a specified group under certain Federal or State programs, or tenants who are involved in artistic or literary activities.

The Violence Against Women Act (42 USC chapter 136, subchapter III) currently protects tenants in certain Federal housing programs. Occupancy in a LIHTC-supported building, however, does not today result in any protection for victims of domestic violence, dating violence, sexual assault, stalking, or threats of any of these actions (collectively referred to in this document as “domestic abuse”).

Reasons for Change

No building that has benefited from LIHTCs should fail to provide reasonable protections for victims of domestic abuse.

Proposal

Protections similar to those provided in the Violence Against Women Act would be required in all Long-Term Use Agreements. The protections would apply to both the low-income and the market-rate units in the building.

For example, once such an Agreement applies to a building, the owner could not refuse to rent any unit in the building to a person because that person had experienced domestic abuse. Moreover, any such experience of domestic abuse would not be good cause for terminating a tenant's occupancy. Under the Agreement, an owner could bifurcate a lease so that the owner could simultaneously (1) remove or evict a tenant or lawful occupant who engaged in criminal activity directly relating to domestic abuse and yet (2) avoid evicting, terminating, or otherwise penalizing a tenant or lawful occupant who is a victim of that criminal activity. The proposal would clarify that such a continuing occupant could become a tenant and would not have to be tested for low-income status as if the continuing occupant were a new tenant.

Any prospective, present, or former occupant of the building could enforce these provisions of an Agreement in any State court, whether or not that occupant meets the income limitations applicable to the building.

In addition, the proposal would clarify that occupancy restrictions or preferences that favor persons who have experienced domestic abuse would qualify for the "special needs" exception to the general public use requirement.

The proposal would be effective for Long-Term Use Agreements that are either first executed, or subsequently modified, on or after the date that is 30 days after enactment. The proposed clarification of the general public use requirement would be effective for taxable years ending after the date of enactment.