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Maryland
Qualified Allocation Plan

For the Allocation of Federal
Low Income Housing Tax Credits

_____, 2016

The Governor approved the initial Qualified Allocation Plan (formerly known as the "Plan for the Allocation of Low Income Housing Tax Credit") in Maryland on April 5, 1990. Subsequent amendments to the plan have been approved by the Governor on February 2, 1991, March 24, 1992, December 14, 1993, January 12, 1995, October 1, 1995, October 7, 1999, May 31, 2001, June 12, 2002, December 11, 2003, April 26, 2005, October 19, 2006, May 13, 2008, October 24, 2008, January 24, 2011, July 31, 2013, and July 8, 2014. The public was provided the opportunity to comment at a public hearing on _____, 2016 concerning the most recent amendments to the plan, which was approved by the Governor on _____, 2016.

Maryland Department of Housing and Community Development
Community Development Administration
7800 Harkins Road
Lanham, Maryland 20706

~~Lanham, Maryland 20706~~
(301)429-7854 Phone
(800) 543-4505 Toll Free
(800) 735-2258 TTY
www.dhcd.maryland.gov

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Kenneth C. Holt, Secretary
Ellington Churchill, Jr., Deputy Secretary

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A. Introduction

A.1 In General

The 1986 Tax Reform Act created the low-income housing tax credit program under §42 of the Internal Revenue Code of 1986, as amended (together with the Treasury Regulations promulgated thereunder, the Internal Revenue Code), to encourage the private sector to invest in the construction and rehabilitation of housing for low and moderate income individuals and families by providing qualified project owners with L~~l~~ow-I~~i~~ncome H~~h~~ousing T~~t~~ax C~~c~~redits (LIHTC) against their federal income tax obligations. The Governor of the State of Maryland has designated the Maryland Department of Housing and Community Development (DHCD) as the agency authorized to allocate LIHTC for residential rental projects in Maryland under this program (Maryland LIHTC Program). The Secretary of DHCD (Secretary) has assigned this function to the Community Development Administration (CDA), a unit of the Division of Development Finance of DHCD. LIHTC are available to project owners of qualifying residential rental projects that meet certain low-income occupancy and rent restrictions.

This Qualified Allocation Plan (the Allocation Plan) includes necessary changes as a result of the passage of the Housing and Economic Recovery Act of 2008, H.R. 3221, and H.R. 8, the American Taxpayer Relief Act of 2012.

Generally, each state may allocate a specified amount of LIHTC annually, based primarily on the state's population. In addition, states that allocate 100% of their annual authority are eligible for additional authority for the following year from a national pool of unused LIHTC authority.

A.2 Determining the Amount of Tax Credit

LIHTC are generally provided to project owners in equal annual installments over a 10-year period. LIHTC may not exceed the applicable percentage of the qualified basis of each low income building in the project as defined in Sections 42(b) and 42(c) of the Internal Revenue Code. The applicable percentage is the percentage that will yield, over the 10-year LIHTC period, LIHTC with a present value equal to either 70% or 30% of the qualified basis of the building. New construction and rehabilitation projects that are not federally subsidized are eligible for the 70% present value LIHTC. Projects financed with federally tax-exempt bonds, or involve the acquisition of existing buildings (when combined with eligible rehabilitation) are eligible for the 30% present value LIHTC. The Internal Revenue Code also requires administering agencies to allocate only the amount necessary to make projects financially feasible. CDA makes this determination at three times in the tax credit process: at the time of application; at the time of reservation/ issuance of the eligibility letter pursuant to section 42 (m) (i) and (2) of the Internal Revenue Code; and finally at the time the building is placed in service.

A.3 Income and Rent Restrictions

The project owner must elect to set aside, at a minimum, either 20% of the housing units in the project for households with incomes at or below 50% of the area median gross income, or 40% of the housing units in the project for households with incomes at or below 60% of the area

median gross income. Household size is based on certain assumptions involving the bedroom configurations of the rental units. Rents for LIHTC units may not exceed 30% of the applicable income limit.

The housing units must be set aside for low-income residents for a compliance period of 15 years (Initial Compliance Period). In addition, the Internal Revenue Code requires the project owner to enter into an Extended Low-Income Housing Covenant (LIHTC Covenant) under which the low-income housing set-aside (meaning the actual number of units that generate LIHTC and are set-aside for low-income tenants), the rent restrictions, and other requirements must continue for an additional period of at least 15 years beyond the Initial Compliance Period (together, the Extended Use Period). The Internal Revenue Code permits a project owner to opt-out of the program restrictions after the initial 15 year compliance period under certain circumstances provided the Maryland LIHTC Program does not provide more restrictive standards.

B. The Allocation Plan

B.1 Introduction

The Internal Revenue Code requires states to adopt an Allocation Plan to allocate LIHTC to projects based on state priorities and federally mandated requirements. This Allocation Plan is intended to ensure that only projects that comply with the Internal Revenue Code and address the housing priorities of Maryland are selected for an allocation of LIHTC. This Allocation Plan sets forth CDA's selection criteria for use in determining housing priorities for allocating LIHTC.

B.2 Reservation of Tax Credits

LIHTC are reserved for eligible housing projects on a competitive basis, except those financed with tax-exempt bonds, which are awarded on a non-competitive project by project basis. Applications for competitive LIHTC will be solicited by CDA by Public Notice in one round per year. If needed, additional rounds of competition may be held until all available resources have been reserved. LIHTC reservations are based on the criteria outlined in this Allocation Plan (see Section G, Allocation Criteria below) and in CDA's Multifamily Rental Financing Program Guide (the ~~Program~~ Guide), attached to and made a part of this Allocation Plan as Appendix A. Reservations are only an agreement between the applicant and CDA to continue the processing of the application for an allocation of LIHTC. Reservations are not an allocation of LIHTC from the State's ceiling and are not binding on the Internal Revenue Service (IRS).

The Maryland LIHTC Program reservation and allocation criteria and the competitive process apply only to residential rental projects other than those financed with tax-exempt bonds. Projects financed with certain tax- exempt bonds may be eligible to receive all or some of their LIHTC outside of the State's ceiling. Although these projects need not compete for an award through the competitive process, they must still be evaluated against the threshold criteria and the competitive scoring criteria (as outlined in the ~~Program~~ Guide) and they must comply with the provisions of this Allocation Plan.

The ~~Program~~ Guide describes in detail CDA's criteria, requirements, and policies for evaluating, ranking, and selecting projects for LIHTC. This Allocation Plan governs the administration of the Maryland LIHTC Program including reservations, allocations, and compliance.

The determination of whether a project is eligible to receive an allocation of LIHTC rests solely with CDA and is contingent upon the project owners' compliance with §42 of t~~T~~he Internal Revenue Code ~~The Internal Revenue Code~~ and the requirements of the Maryland LIHTC Program, which may be more restrictive than the requirements of §42 of the Internal Revenue Code.

B.3 Adoption of the Allocation Plan

Before adopting this Allocation Plan, including the ~~Program~~ Guide, CDA held a public hearing on _____, 2016, after giving at least 14 days' notice to the public by means of publication in ~~–~~newspapers of general circulation. Public comments were permitted in writing at the office of CDA any time up to the beginning of the public hearing, and verbal comments were received by CDA at the public hearing. This Allocation Plan, including the ~~Program~~ Guide, was subsequently submitted to the Governor for approval and was approved by the Governor on _____, 2016, effective as of that date.

CDA may amend this Allocation Plan at any time by means of the procedure described above for adoption of the Allocation Plan. This Allocation Plan shall also be amended as necessary to ensure that CDA's LIHTC allocations comply with the requirements of the Internal Revenue Code. The ~~Program~~ Guide may be amended for non-substantive changes or for changes which do not affect LIHTC without further amendment to this Allocation Plan and without a public hearing, by determination of the Secretary, to the extent necessary to carry out CDA policies.

All LIHTC reservations, feasibility determinations, and allocations made under prior versions of this Allocation Plan will be honored by CDA. However, compliance monitoring for all projects, regardless of when LIHTC were reserved or allocated, shall be conducted in accordance with and subject to the compliance monitoring fees of this version of the Allocation Plan, subject to any future amendments.

Applicants for LIHTC should refer to the Internal Revenue Code, and specifically to §42 of the Internal Revenue Code and the regulations promulgated thereunder, for additional requirements and definitions applicable to the Maryland LIHTC Program. CDA strongly recommends that applicants for LIHTC consult their tax advisor, legal counsel, accountant, or financial advisor for further details concerning the Maryland LIHTC Program.

CDA is responsible for administering the Maryland LIHTC Program under §42 of the Internal Revenue Code, the Housing and Community Development Article, §§4-101 – 4-255 of the Annotated Code of Maryland (Statute), and the Internal Revenue Code of Maryland Regulations (COMAR) Title 05, Subtitle 05, Chapter 06. CDA's interpretation of §42 of the Internal Revenue Code, the Statute, or COMAR is not binding upon the IRS and CDA neither represents nor

warrants to any project owner, investor, or other program participant how the IRS will interpret or apply any provision of the Internal Revenue Code in any instance.

B.4 Administration of the Allocation Plan

Nothing in this Allocation Plan is intended to impair or limit the rights of CDA with respect to, or to release a project owner from, any of the covenants or conditions contained in any agreement or contract between the project owner and CDA. CDA may take against a project owner any action permitted under any agreement or provision of law that it deems necessary or expedient for failure to perform any such covenant or condition, including limiting or prohibiting participation by a project owner or any of its principals in the Maryland LIHTC Program.

The project owner is responsible for complying with this Allocation Plan and the ~~Program~~ Guide in effect when the project owner submits to CDA an application for LIHTC. In addition, CDA reserves the right to modify this Allocation Plan or the ~~Program~~ Guide through the procedures described above and to require the project owner to comply with the modifications, as appropriate in the determination of CDA, unless otherwise prohibited by law.

Copies of this Allocation Plan are available upon written request to CDA at 7800 Harkins Road, Lanham, MD 20706, attention: Tax Credit Program Administrator or on the Department's website at http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx.

C. Application Process and Fees

C.1 Application Process

The application process, including provisions for pre- and post-round publication of information, is outlined in Section 2 of the ~~Program~~ Guide.

For a project to be considered for an allocation of LIHTC, CDA must receive a completed application, together with a non-refundable application fee, within the deadline specified in the public notice. All fees are outlined in this Allocation Plan and ~~Program~~ Guide.

To be evaluated during any round of competition (the competition is referred to as "rating and ranking"), projects must meet all of the threshold criteria specified in the ~~Program~~ Guide. These requirements are intended to eliminate projects that do not meet basic Maryland LIHTC Program requirements and to ensure that LIHTC are reserved for projects that meet the Internal Revenue Code requirements and are both viable and ready to proceed. Projects that do not meet the threshold criteria will not be rated and ranked during the competitive rounds. Some of the threshold requirements may be waived at CDA's discretion for compelling reasons that are not inconsistent with the Internal Revenue Code. See Section 5 of the ~~Program~~ Guide for waiver provisions and requirements.

CDA will release information on all Maryland LIHTC awards in a round along with information on waivers granted and any State Bonus Points awarded within the competitive scoring criteria pursuant to Section ~~4~~ 2.5 of the ~~Program~~ Guide.

Projects with 50% or more of their development and acquisition costs financed with the proceeds of tax-exempt bonds may receive LIHTC on the entire ~~Q~~qualified LIHTC~~Tax Credit B~~basis outside the State's annual allocation of tax credits~~LIHTC authority~~. Projects with less than 50% of their costs financed with the proceeds of tax-exempt bonds may receive LIHTC on the appropriate portion of the Eligible Tax Credit Basis so financed without requiring an allocation.

C.2 Acquisition Credits

For projects receiving acquisition LIHTC for an existing project, CDA may, as a condition for a reservation of LIHTC, require the sponsor to provide a legal or Certified Public Accountant's opinion regarding the project's satisfaction of (or exemption under §42(d) (6) (C) of the Internal Revenue Code from) §42(d) (2) (B) (ii) of the Internal Revenue Code, i.e. the 10 year rule.

C.3 Fees

The following are fees specifically associated with LIHTC. These fees are also detailed in Appendix B of the Guide.~~Application Fee.~~
~~See Section 2.4.2 of the Guide.~~

-LIHTC **Reservation Fee.**
All sponsors must pay a nonrefundable reservation fee of $5,000 upon receipt of a reservation letter for LIHTC for each project. Failure to pay the reservation fee, in the amount and at the time required will result in the cancellation of the reservation. CDA will not issue an allocation of LIHTC or IRS Form(s) 8609 needed to claim LIHTC unless all required fees have been paid.

LIHTC Allocation Fee. Competitively Allocated Credits:

All sponsors must pay a nonrefundable allocation fee equal to 5% of the annual Tax Credits reserved for the project upon the earlier of the filing of a request for a Carryover allocation (hereafter defined) or the date the project is placed in service.
~~All sponsors must pay a nonrefundable allocation fee equal to 5% of the annual Tax Credits reserved for the project upon the earlier of the filing of a request for a Carryover Allocation (hereafter defined) or the date the project is placed in service.~~

LIHTC Allocation Fee. Tax-Exempt Bond Financed Projects:

For tax-exempt bond financed projects, sponsors must pay a nonrefundable allocation fee of 5% of the estimated LIHTC at the time CDA issues the eligibility letter pursuant to Section 42(m)(1) and (2) of the Internal Revenue Code. All tax-exempt bond financed projects are subject to an

additional allocation fee equal to the difference between the fee paid at the issuance of the eligibility letter and the actual LIHTC allocated on the final IRS Form(s) 8609.

~~For tax-exempt bond financed projects, sponsors must pay a nonrefundable allocation fee of 5% of the estimated LIHTC at the time CDA issues the eligibility letter pursuant to §§42(m)(1) and (2) of the Internal Revenue Code (the Internal Revenue Code). All tax-exempt bond financed projects are subject to an additional allocation fee equal to the difference between the fee paid at the issuance of the eligibility letter and the actual LIHTC allocated on the final IRS Form(s) 8609.~~

~~Extension of Time to Meet the~~ 10% Expenditure Test Deadline Extension Fee.

Sponsors unable to meet the deadline for meeting the requirements for a Carryover Allocation (see Section E, Allocations) may request an extension of the deadline up to the maximum deadline of 12 months after the date the Carryover Allocation is made~~prescribed by CDA~~. Sponsors must pay a nonrefundable extension fee of $1,000 for each month for which an extension of time to meet this deadline is requested. The fee must be paid at the time the extension request is submitted. ~~–~~All extension requests must be approved by the Tax Credit Program Administrator for CDA.

IRS Form 8609 Amendment Fee.

Sponsors requesting amendments to the IRS Form(s) 8609 already issued by CDA where the requested amendment is not the result of an administrative error by CDA must pay a non-refundable 8609 Amendment fee of $4,000 with the request.

LIHTC Compliance Monitoring Fee. All sponsors must pay a nonrefundable annual compliance monitoring fee of $30.00 per LIHTC unit, as ~~more fully described~~detailed in Section H.8~~7~~.

IRS Form 8823 Compliance Re-Review Fee.

All Sponsors must pay a nonrefundable fee of $25.00 per unit for the filing of a corrected 8823 with the IRS for a previously filed uncorrected 8823 with the IRS, as detailed in Section H.8.

Payment Instructions.

Unless advised otherwise by official CDA notices, all fees shall be made payable to the "Community Development Administration" or "CDA" and remitted directly to the attention of:

Tax Credit Program Administrator
Community Development Administration
Maryland Department of Housing and Community Development
7800 Harkins Road
Lanham, MD 20706

D. Reservations

D.1 In General

Applications will be evaluated based on the rating and ranking of the projects using the evaluation criteria set forth in detail in the ~~Program~~ Guide. Recommendations for reservations of LIHTC will be made by CDA to DHCD's Housing Finance Review Committee (HFRC). After evaluating CDA's recommendations, HFRC will make a final recommendation to the Secretary, who ~~must~~ has the authority to make the final decision regarding whether to approve each reservation of LIHTC. After applications have been evaluated against the threshold criteria and rated and ranked, the Secretary may approve reservations of LIHTC without recommendations by HFRC in emergencies or when urgent action is required. If, in any round of competition, CDA determines in its sole discretion that the submitted projects have low compliance with the competitive scoring criteria, CDA reserves the right not to make any recommendations for reservations of LIHTC at that time and to evaluate the applications in a subsequent round.

Following approval, sponsors will receive either LIHTC reservation letters or allocations, depending on the timing of the funding round. Reservation letters are conditional commitments to allocate LIHTC. Reservations or allocations are for only the amount of LIHTC, in the sole determination of DHCD, necessary for the financial feasibility of projects and their viability as a qualified low-income housing project. Each reservation is further subject to a number of conditions. These conditions include the submission of evidence of timely completion of the project and documentation certifying compliance with federal requirements. Owners are also required to verify project costs as a condition of receiving a Carryover Allocation and again when the project is placed in service. Reservations may be cancelled and projects withdrawn from processing for the reasons set forth in the Guide under Section ~~7.1~~6.1.1.

Comment [CC1]: From 7.25 of Guide

In general, for projects competing in any round of rating and ranking with awards made before July 1 of any calendar year, following recommendation by HFRC and approval by the Secretary, CDA will issue a reservation letter to the sponsor. This reservation letter is a commitment to reserve LIHTC for the project, subject to receipt of documentation indicating the following: timely completion of the project, certifying compliance with both state and federal requirements, verifying project costs (at the time of Carryover Allocation and at the time the project is placed in service). Documentation must additionally show~~, and showing~~ the amount of LIHTC necessary for the financial feasibility of the project and its viability as a low income housing project.

For projects competing in any round of rating and ranking with LIHTC awards made after June 30, allocations, not reservations, may be issued by CDA after recommendation by HFRC and approval by the Secretary. See Section E. Allocations, for more information.

In the event that reservations of LIHTC are approved or denied on any basis other than an application's evaluation against the threshold criteria and its rating and ranking under the

competitive scoring criteria, CDA will include in the application file, and make available upon public request, a written explanation for the approval or denial of LIHTC, as applicable.

D.2 Locally Issued Bonds

For projects funded by tax-exempt bonds issued by local jurisdictions which request 4% LIHTC, CDA will not perform the feasibility determination on behalf of the local jurisdiction unless the issuing local jurisdiction submits a written request to CDA. A complete copy of the CDA Application Submission Package must be submitted to request 4% LIHTC for projects funded by tax-exempt bonds issued by local jurisdictions.

D.3 Forward Reservations

Under certain conditions a project may be eligible to receive a reservation of LIHTC from the State's ceiling for future years (Forward Reservation). To receive a Forward Reservation, project sponsors must agree to comply with all conditions imposed by CDA and the IRS. The following types of projects may receive Forward Reservations from a future year's LIHTC ceiling:

Projects Unable to Meet Deadlines. CDA may approve a Forward Reservation for projects that have already received reservation letters but are not able to be placed in service in the year of their reservation or are unable to meet the 10% expenditure test as provided in §42(h)(1)(E) of the Internal Revenue Code. Such projects will be considered for a Forward Reservation only if LIHTC reserved can be allocated to other projects or can be carried forward for allocation in a future year. To be considered for an extension of these deadlines, sponsors must remit the non-refundable extension of reservation fee as detailed in Section C.3.

Insufficient Tax Credits. CDA may approve a Forward Reservation for projects that ranked high enough in a round of competition for an award of LIHTC when there is insufficient remaining LIHTC that can be allocated by CDA in the current year.

Multiple-Year Reservations. CDA may approve a Forward Reservation when projects or reservations will be appropriately staged over two or more years. CDA will determine if the sponsor's request for LIHTC is large enough to limit the available resources in the current or future years for other projects that otherwise qualify for a reservation.

D.4 Increase of Reservations

CDA may approve increases in the amount of LIHTC reserved for projects of up to 10% of the amount previously approved by the Secretary. Such increases may be approved only from the time the reservation letter is issued until the time a Carryover Allocation is issued. Projects whose LIHTC are increased after approval by the Secretary need not be reevaluated against the threshold and competitive scoring criteria. The aggregate increases approved by CDA may not exceed 10% of the State's LIHTC ceiling for the year of the increase.

D.5 Tax Credit Rates

Competitively Allocated Tax Credits. ~~the Internal Revenue Code~~

It is not necessary to file a Binding Agreement and Election Statement for new construction or substantially rehabilitated projects which are placed in service after January 1, 2015. For these projects, CDA will assume a 9% applicable credit percentage. However, the use of the 9% rate will not change the amount of credits reserved for the project. At Carryover Allocation, CDA will elect to either use the 9% applicable percentage and allocate fewer credits than the amount for which the project qualifies (i.e., allocate the reserved amount) or elect to use a tax credit rate lower than 9% in order to establish the amount of credits for which the project qualifies at an amount equal to the reserved amount.

The Binding Agreement and Election Statement must be submitted if the sponsor wishes to elect (or "lock-in") the applicable percentage for the 4% acquisition credit rate for existing buildings. A sponsor may elect (or lock-in) the applicable percentage any time from the month in which the reservation letter is fully executed by the project sponsor and CDA, up to the month in which the Carryover Allocation is issued by CDA to the project owner. The statement must be notarized and filed with CDA no later than the 25th day of the month in which the election under §42(b) (1) (A) (ii) (I) of the Internal Revenue Code for the applicable percentage is taken.

In accordance with the Internal Revenue Code, if a sponsor does not file a Binding Agreement and Election Statement to lock-in the applicable 4% credit rate for the acquisition of existing buildings, the applicable percentage will be determined by the month each building in the project is placed in service.

Non-Competitive Tax-Exempt Bond Financed Projects.

The "Low-Income Housing Credit - Election under Section 42(b) (2) (A) (ii) (II) to use as the Applicable Percentage the Appropriate Percentage for the Month in which Tax-Exempt Obligations are Issued" (i.e., The LIHTC Election under Section 42) is used to lock-in the credit rate for non-competitive tax-exempt bond financed projects. The LIHTC Election under Section 42 may be filed with CDA within the month the bonds are sold or in the first 5 days of the following month. The applicable percentage elected is limited to the month in which the bonds are sold.

For projects financed by tax-exempt bonds issued by a local jurisdiction, the sponsor must have the issuer certify the information included in The LIHTC Election under Section 42 prior to the issuance of the bonds and pursuant to §1.42-8(b) (4) (I) of the IRS Regulations. The LIHTC Election under Section 42 must be filed with CDA within the month the bonds are sold or in the first 5 days of the following month. As with CDA bonds, the applicable LIHTC rate elected is limited to the month in which the bonds are sold. In accordance with the Internal Revenue Code, if a sponsor does not file The LIHTC Election under Section 42, the applicable percentage will be determined by the month each building in the project is placed in service.

D.6 Cancellation of Reservation

Each reservation of LIHTC will be based on the representations made by the sponsor about the qualification of their project under the competitive scoring criteria set forth in this Allocation

Plan and Guide. As the project is completed and placed in service, the sponsor must show that all of the representations and undertakings made in the application and all competitive scoring criteria are and will continue to be fulfilled to CDA's satisfaction. Failure of a sponsor to show that all representations and undertakings were carried out and all project selection criteria continue to be met may result in cancellation of a reservation. Substantial delays in construction of a project may also result in cancellation of a reservation. As required by federal law, sponsors must certify, at specific points in the process, as to the amount of all federal, State and local subsidies included or expected to be included in their projects. See Section 6 of the Guide for more information on the cancellation of reservations.

Failure to submit the certification and supporting documentation will result in cancellation of the reservation. Any LIHTC available from canceled reservations will be awarded to other projects or carried forward in Maryland's unallocated pool.

D.7 Limitations on Reservations

Based on the demand for LIHTC and on project rankings, CDA may in its sole discretion limit LIHTC reserved for any one sponsor, for projects in any specific jurisdiction, or substitute CDA multifamily loan funds for the estimated LIHTC equity otherwise lost to the project.

E. Allocations

E.1 In General

As required by §42 of the Internal Revenue Code, sponsors must either place the project in service in the year of reservation or qualify for a binding commitment to carry over LIHTC for up to two additional years (a Carryover Allocation). Under §42(h) (1) (E) (ii) of the Internal Revenue Code, to qualify for a Carryover Allocation, a sponsor must (a) incur costs in excess of 10% of the reasonably expected basis of the project (the 10% Expenditure Test) by the date which is 12 months after the date the Carryover Allocation is made and (b) place the project in service by the end of the second year following the year of the Carryover Allocation. Failure to meet these requirements will result in the loss of the LIHTC for the project. **The actual date for 10% Expenditure Test compliance will be set in the reservation document based on the schedule supplied by the sponsor in the project application. The Project Sponsor will only be allowed to re-set the date for submission of the 10% Expenditure Test one time and only within 24 hours of the Kick-Off Meeting.**

E.2 Limitations on Eligible Basis

CDA will exercise its discretion under §42(d)(5)(B)(v) and §42(m)(2)(A) and (B) of the Internal Revenue Code to limit eligible basis to an amount it determines to be reasonable and necessary for the long term viability of the project as affordable housing. This is not a limitation on the amount of eligible basis allowable to a project under the Internal Revenue Code, and a project whose eligible basis allowable under the Internal Revenue Code exceeds the feasibility limit

imposed by CDA may still be eligible for LIHTC. However, the maximum amount of LIHTC allocated to the project by CDA will be calculated based on the eligible basis limit applicable to that project as determined by the cost limitations and other restrictions contained in the Guide.

E.3 State 30% Basis Boost

All family projects located within Communities of Opportunity that request competitive tax credits qualify for the State 30% Basis Boost without prior CDA approval.

For all other projects and as authorized by and to the extent permitted by §42(d)(5)(B)(v) of the Internal Revenue Code, CDA may increase the eligible basis of projects by up to 30% (i.e., the State Basis Boost) if CDA determines that the project or a building in the project needs the State Basis Boost to be financially feasible.

CDA may make a determination that a project is eligible for the State Basis Boost on its own initiative at any time, based upon review of the project's sources and uses. Limitations on the maximum amount of R~~r~~ental H~~h~~ousing ~~funds~~Financing Programs (RHFP) and LIHTC continue to apply to projects receiving a Basis Boost under this section, unless CDA uses its discretion to adjust the amount of RHFP and LIHTC to balance the demand for resources as described below in Section E.5.

Projects receiving a Basis Boost because of location in a Qualified Census Tract (QCT) or Difficult Development Area (DDA) are not also eligible to receive the State Basis Boost.

Projects which receive competitively allocated credits are eligible for the State Basis Boost. The Housing Economic Recovery Act of 2008 does not permit the State Basis Boost for projects that receive credits outside the State's annual allocation of tax credits. (i.e., tax- exempt bond financed projects are not eligible for the State Basis Boost).

E.4 Financing with Other Programs

Financing from the Shelter and Transitional Housing Facilities Grant Program or Partnership Rental Housing Program may not be included in a project's eligible basis if they are funded from GO Bonds and if competitively allocated LIHTC are used. Please contact CDA before submitting an application for LIHTC for projects involving these programs.

E.5 Balancing ~~Rental Housing Financing Programs Funds (~~RHFP~~)~~ and Tax Credits

To balance the demand for RHFP and LIHTC, CDA reserves the right to adjust the amount of LIHTC as well as RHFP requested in an application. CDA also may substitute other sources of funds for those requested.

E.6 Request for a Carryover Allocation

Unless ready to be placed in service, a project with a reservation of LIHTC from the current calendar year's LIHTC ceiling will receive a Carryover Allocation from CDA by December of that year. To qualify for a Carryover Allocation, the sponsor holding a current year reservation must provide an updated project budget on CDA Form 202upon request by CDA.

E.7 The 10% Expenditure Test

CDA requires sponsors to complete an Affidavit of Utilization of a Reservation (the Affidavit) no later than 12 months from the date of the Carryover Allocation. The Affidavit states the sponsor has incurred costs in excess of 10% of the reasonably expected basis of the project. If a sponsor has not met the 10% Expenditure Test within 12 months from the date of the Carryover Allocation, the Carryover Allocation will be canceled. To be considered for an extension of the 10% Expenditure Test deadline, sponsors must submit an Affidavit of Utilization of a Reservation form indicating the extension request and the nonrefundable extension fee for each month's extension at the time of the request as detailed in Section C.3. Requests for extensions must be approved by the Tax Credit Program Administrator for CDA.

To meet the requirements of the certification of expenditures to date or the 10% Expenditure Test described above, the sponsor must submit a third-party attorney's or certified public accountant's certification that is acceptable to CDA. The certification must include an itemization of the project's reasonably expected basis and the costs incurred. Alternatively, the sponsor may prepare and submit a certification and itemization of the project's reasonably expected basis and the costs incurred, along with supporting documentation acceptable to CDA.

Failure to submit the certification and supporting documentation will result in cancellation of the reservation or allocation. Any LIHTC available from canceled reservations or allocations will be awarded to other projects or carried forward in Maryland's unallocated pool.

While CDA is required to verify that a project has satisfied this 10% Expenditure Test, CDA makes no determination of the test's sufficiency with respect to the Internal Revenue Code or the IRS. As with all other matters under §42 of the Internal Revenue Code, sponsors and investors must rely on their own professionals to determine whether the 10% Expenditure Test has been satisfied.

E.8 Placed in Service Evaluation/IRS Form(s) 8609

To keep Carryover Allocations and receive IRS Form(s) 8609 (as discussed below), projects must be placed in service by the end of the second year following the date of the Carryover Allocation. Once projects are placed in service, the sponsor must request IRS Form(s) 8609 from CDA no later than ninety (90) calendar days after the first year the credit is claimed for the first building receiving an allocation. If sponsors elect to defer the first year of the credit period until the succeeding tax year, CDA must be notified in writing no later than ninety (90) calendar days after the original required placed in service deadline for the project.

CDA will issue IRS Form(s) 8609, certifying the allocation of LIHTC to a project, at the time the buildings are placed in service. The form is needed for the sponsor to claim LIHTC on the project. Before the IRS Form(s) 8609 is issued and no later than three months after the close of the first year in which LIHTC are taken, CDA must receive from the sponsor the documentation specified below, as well as any additional documentation requested. As required by the Internal Revenue Code, CDA will undertake a final evaluation of each project to determine the amount of LIHTC needed to make the project financially feasible. While CDA will use its best efforts to

complete this review as soon as possible, sponsors are advised that the review process may take as long as 90 days to complete. In addition, the IRS Form(s) 8609 will not be issued until the Final Determination of Loan Proceeds has been fully executed for those projects which have other CDA financing. Only the amount of LIHTC needed for financial feasibility and viability of the project as a qualified low income housing project throughout the 15 year compliance period will be allowed. Any additional LIHTC previously allocated to the project will be returned to CDA.

At the time buildings are placed in service, all required post-completion documentation is received and reviewed, and upon receipt of the request described above, CDA will prepare and issue the IRS Form(s) 8609 (Low-Income Housing Credit Allocation Certification) certifying the final amount of LIHTC allocated to each building in a project. A Form 8609 is needed to claim LIHTC for any building in a project. Before Form(s) 8609 is issued, CDA must receive and approve the following documents:

- **Date Project Placed in Service.** In order to demonstrate that a project has been placed in service, the sponsor must provide use and occupancy permits for each building in the project. If the project involves rehabilitation, or the local jurisdiction does not issue use and occupancy permits, the sponsor may provide other evidence acceptable to CDA for the month the project was placed in service. –The settlement statement must be provided to document the acquisition placed in service date.

- **Cost Certification.** Each sponsor must submit a cost certification or other statement of costs, certified by the sponsor, detailing the total sources and uses of funds for the project and containing a statement of the project's eligible basis for each building in the project. The cost certification must be prepared by a third-party qualified professional. For projects financed by the Rural Housing Service of Rural Development, an agency of the U.S. Department of Agriculture, or insured by the Federal Housing Administration (FHA), the federal cost certification may be submitted if it includes the total sources and uses of funds for the project.

- **Limited Partnership/LLC Operating Agreement.** Each sponsor must provide to CDA a copy of the most recent fully executed limited partnership agreement or limited liability company operating agreement, including all amendments, attachments and exhibits.

- **Extended Low-Income Housing Covenant (LIHTC Covenant).** Each sponsor must submit a copy of the LIHTC Covenant in the form required by CDA, with evidence that it has been recorded. CDA may require as condition of release of the IRS Form(s) 8609 that projects with more than a single building submit a recorded amendment to the LIHTC Covenant specifying the actual applicable fraction for each building in the project.

- **Evidence of full payment of all LIHTC Fees.**

- **Evidence of registration of the project on www.mdhousingsearch.org.**

- **An executed Final Determination of Loan Proceeds, if applicable.**

- **Satisfaction of all unresolved compliance issues.**

The above list is subject to change and sponsors must obtain from CDA the most current list of required documents pertaining to each individual project for proper and timely processing of IRS Form(s) 8609.

If the required documentation described above is not submitted by the sponsor within the required timeframe, CDA may cancel all or a portion of LIHTC allocated to the project as provided by the Internal Revenue Code and the following section of this Allocation Plan. If the project owner elects to defer the first year of the credit period, CDA must be notified by the sponsor in writing no later than the initial placed in service deadline provided by the Carryover Allocation.

Prior to issuance of IRS Form(s) 8609, CDA will undertake a final evaluation of each project to determine the amount of LIHTC needed to make the project financially feasible. Only the amount needed for financial feasibility and viability as a qualified low-income housing project throughout the fifteen (15) year compliance period will be allocated. Any excess LIHTC previously allocated to the project will be recaptured.

E.9 Allocation Amendment

Sponsors requesting amendments to the IRS Form(s) 8609 already issued by CDA where the requested amendment is not the result of an administrative error by CDA must pay a non-refundable Allocation Amendment fee of $4,000 with the request; as detailed in Section C.3.

E.10 Cancellation of Allocation

Each allocation of LIHTC will be based on the representations made by the sponsor about the qualification of their project under the competitive scoring criteria set forth in the Guide. As the project is completed and placed in service, the sponsor must show that all of the representations and undertakings made in the application and all competitive scoring criteria are and will continue to be fulfilled to CDA's satisfaction. Failure of a sponsor to show that all representations and undertakings were carried out and all project selection criteria continue to be met may result in cancellation of an allocation. Substantial delays in completing a project may also result in cancellation of an allocation. Sponsors must certify, at each point in the process, as to the amount of all federal, State and local subsidies included or expected to be included in their project.

Failure to submit the certification and supporting documentation will result in cancellation of the allocation. In general, any LIHTC available from canceled allocations will be awarded to other projects or carried forward in Maryland's unallocated pool.

Notwithstanding any other provision of this Allocation Plan, where (i) a project has not been placed in service by the date required or it is apparent that a project will not be placed in

service by the date required, (ii) such failure is due to circumstances beyond the sponsor's control, and (iii) the sponsor has returned its Carryover Allocation in the last quarter of the calendar year or, at CDA's sole discretion, an earlier time, CDA may reserve LIHTC in an amount not to exceed the amount of LIHTC returned, and may allocate such LIHTC to the sponsor from the current or future year's LIHTC ceiling.

In order to effect an allocation under such conditions, the following conditions must be met: (i) prior to returning the allocation, the sponsor must provide written notice to the CDA Tax Credit Program Administrator via certified mail, describing (a) the circumstances causing the delay, (b) all remedial measures attempted by the sponsor to mitigate the delay, and (c) any other pertinent information relating to the delay; and (ii) the CDA Director, the CDA Deputy Director, ~~Multifamily Housing and Neighborhood BusinessWorks~~ or the Director, Multifamily Housing Programs must find and determine that (a) the delay was caused by circumstances beyond the sponsor's control, (b) the sponsor exercised due diligence in seeking to resolve the circumstances causing the delay, (c) the sponsor's project in all respects, except the time placed in service, still meets the conditions upon which LIHTC were originally allocated, and (d) the project is still desirable in terms of meeting affordable housing needs. The written notice from the sponsor seeking to return LIHTC and determination of the CDA Director, the CDA Deputy Director or the Director, Multifamily Housing Programs described above may be executed in advance of the actual return of LIHTC. For example, such notice and determination could occur prior to initial closing of a DHCD loan and the determination could specify the actual timeframe for return of the credits to the state at a future date.

F. Non-Profit Set-Aside

As required by §42(h)(5)(A) of the Internal Revenue Code a minimum of 10% of the total LIHTC available for allocation must be set aside annually for projects involving qualified nonprofit organizations (the Non-Profit Set-Aside). CDA agrees to satisfy this federal requirement first by making awards, consistent with the scores determined in accordance with the ~~Program~~ Guide, to the top rated projects in which 100% of the controlling interest is held by nonprofit organizations. If there are not enough such projects in a competitive round to meet the federal requirement, CDA will include the highest scoring projects in which the controlling interest is held by a nonprofit/for-profit joint venture to meet the Non-Profit Set-Aside. Additional set-aside categories and amounts may be established periodically by CDA, by amendment to this Allocation Plan, to address particular needs. Other than the required Non- Profit Set-Aside, set-aside amounts shall have an expiration date established by CDA, at which time uncommitted LIHTC will revert to the general pool of LIHTC available to all qualified projects.

G. Allocation Criteria

CDA has developed allocation criteria for use in selecting projects for LIHTC allocations. The allocation criteria include the following in accordance with §42(m)(2)(C) of the Internal Revenue Code: project location; housing needs characteristics; project characteristics, including whether

the project includes the use of existing housing as part of a community revitalization plan; sponsor characteristics; tenant populations with special housing needs; public housing waiting lists; tenant populations of individuals with children; projects intended for eventual tenant ownership; the energy efficiency of the project; and the historic nature of the project. Additional allocation criteria include: serving the lowest income residents; serving qualified residents for the longest periods; location in qualified census tracts; and participation of local tax-exempt organizations. **The allocation criteria are set forth in detail in the ~~Program~~ Guide.**

The application material (the Multifamily Rental Financing Application Submission Package), which may be revised from time to time, requests information concerning how the project meets the allocation criteria. This information will be used by CDA to assign points to projects based on the allocation criteria. The order of priority for reserving or allocating available LIHTC to projects will be determined by rating and ranking projects in accordance with the number of points received.

The allocation criteria reflect requirements of §42 of the Internal Revenue Code and other relevant federal laws, State housing needs, and DHCD policies. While the criteria set forth in this Allocation Plan and the ~~Program~~ Guide will be used to evaluate whether projects meet DHCD's housing objectives, projects will also be evaluated on their financial feasibility and viability as low-income housing projects. The determination that a project will receive an allocation of LIHTC rests solely with CDA.

The Guide includes information regarding CDA's criteria, requirements, and policies for administering the Maryland LIHTC Program. **The Guide incorporates many of the federal requirements for LIHTC but is not intended to replace or fully represent the LIHTC requirements under §42 of the Internal Revenue Code. If there is a conflict between a requirement of this Allocation Plan or the ~~Program~~ Guide and the requirements of §42 of the Internal Revenue Code, the more restrictive requirement shall apply in the sole discretion of CDA.**

H. Project Monitoring

H.1 Introduction

The Internal Revenue Code requires CDA to include in its Allocation Plan a procedure that CDA will follow in monitoring LIHTC projects for noncompliance with the provisions of §42 of the Internal Revenue Code and in notifying the IRS of any noncompliance of which CDA becomes aware. Treasury Regulation §1.42-5 sets forth minimum standards that the monitoring procedures must meet in order for this Allocation Plan to meet Code requirements. Compliance with the requirements of §42 is the responsibility of the sponsor of the building for which LIHTC is allowable. CDA's obligation to monitor for compliance with the requirements of §42 does not make CDA liable for a project owner's noncompliance.

CDA adopts the following requirements for evaluating compliance with §42 of the Internal Revenue Code and the Maryland LIHTC Program. These minimum standards may be modified or amended in CDA's sole discretion by amendment to this Allocation Plan.

H.2 Recordkeeping and Record Retention

Recordkeeping.

The project owner must keep records for each qualified low-income building in the project that reflect the following for each year throughout the term of the Extended Use Period in effect for that project:

(i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

(ii) The percentage of residential rental units in the building that are low-income units;

(iii) The rent charged on each residential rental unit in the building (including any utility allowances);

(iv) The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under §42(g) (2) of the Internal Revenue Code;

(v) The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;

(vi) The annual income certification of each low-income tenant per unit unless exempt from annual income recertification for a building occupied entirely by low-income tenants (See part (v) of Review under Certification and Review);

(vii) Documentation to support each low-income resident's income certification, unless exempt (See part (v) of Review under Certification and Review);

(viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

(ix) The character and use of the nonresidential portion of the building included in the building's eligible basis under §42(d) of the Internal Revenue Code.

Record Retention.

The project owner must retain the records described above for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period (defined in Code §42(f)(1)), however, must be retained for at

least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period (defined in Code §42(i)(1)) of the building.

Building Inspection Record Retention.

The project owner must retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit for CDA's inspection. Retention of the original violation reports or notices is not required once CDA reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

H.3 HUD Reporting Requirements

Pursuant to the Housing and Economic Recovery Act of 2008 (HERA), specifically at 42 USC Section 1437z-8, CDA is obligated to furnish to the U.S. Department of Housing and Urban Development (HUD), no less than annually, the following information about the tenants of each project that receives LIHTC: race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the United States Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments. Accordingly, the project owner shall provide such information to CDA in the form and at the times required by CDA in order to permit CDA to comply with its obligations as may be amended by HUD from time to time.

H.4 Certification and Review

Certification.

The project owner must certify to CDA at least annually, in a form acceptable to CDA and under penalty of perjury, that for the preceding 12-month period the following conditions are satisfied:

(i) The project met the requirements of:

a. The 20-50 Ttest under §42(g)(1)(A) of the Internal Revenue Code, or the 40-60 Ttest under §42(g)(1)(B) of the Internal Revenue Code, whichever minimum set-aside test was applicable to the project; and

b. If applicable to the project, the 15-40 Ttest under §42(g)(4) and §142(d)(4)(B) of the Internal Revenue Code for "deep rent skewed" projects.;

(ii) There was no change in the applicable fraction (as defined in §42(c)(1)(B) of the Internal Revenue Code) of any building in the project, or that there was a change, and a description of the change.;

(iii) The project owner has received an annual income certification from each low-income resident, and documentation to support that certification, unless exempt (See part (v) of Review under Certification and Review).;

(iv) Each low-income unit in the project was rent-restricted under §42(g)(2) of the Internal Revenue Code.;

(v) All units in the project were for use by the general public, including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. For these purposes, a "finding of discrimination" includes an adverse final decision by the Secretary of HUD under 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency under 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.~~;~~

(vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards). The State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If the responsible governmental unit issued a violation report or notice, the project owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification submitted to CDA. In addition, the project owner must state whether the violation has been corrected.~~;~~

(vii) There was no change in the eligible basis (as defined in §42(d) of the Internal Revenue Code) of any building in the project, or if there was a change, the nature of the change.~~;~~

(viii) All tenant facilities included in the eligible basis under §42(d) of the Internal Revenue Code of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building.~~;~~

(ix) If a low-income unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.~~;~~

(x) If the income of tenants of a low-income unit in the project increased above the limit allowed in §42(g)(2)(D)(ii) of the Internal Revenue Code, the next available unit of comparable or smaller size in the building was or will be rented to residents having a qualifying income.~~;~~

(xi) An extended low-income housing commitment as described in §42(h)(6) of the Internal Revenue Code was in effect, including the requirement under §42(h)(6)(B)(iv) of the Internal Revenue Code that a project owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937.~~;~~

(xii) The project owner has complied with §42(h)(6)(E)(ii)(I) and has not evicted or terminated the tenancy of an existing tenant of any low-income unit other than for good cause.~~; and~~

(xiii) All low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under §42(i) (3) (B) (iii) of the Internal Revenue Code or single-room occupancy units rented on a month-by-month basis under §42(i) (3) (B) (iv) of the Internal Revenue Code).

Review.

(i) CDA will conduct on-site inspections of all buildings in all low-income housing projects by the end of the second calendar year following the year the last building in the project is placed in service. In addition,~~ and,~~ for at least 20 percent of the project's low-income units, CDA will inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.~~;~~

(ii) At least once every 3 years throughout the Extended Use Period, CDA will conduct on-~~-~~site inspections of all buildings in all low-income housing projects and, for ~~at least 20 percent of the project's low-income units~~the ~~minimum~~ number of low income units ~~required~~as permitted by the Treasury Regulation 1.45-5T and Rev. Proc. 2016-15, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.~~;~~

(iii) CDA will randomly select which low-income units and tenant records are to be ~~and~~ reviewed an~~s~~d CDA may select different units for on-site inspections and for the income certification review. The review of tenant records may be undertaken wherever the project owner maintains or stores the records (either on-site or off-site). The units and tenant records to be inspected and reviewed will be chosen in a manner that will not give project owners of low-~~-~~income housing projects advance notice that ~~a~~ unit and tenant records for a particular year will or will not be inspected and reviewed. However, CDA may give a project owner reasonable notice (as defined in Treasury Regulation 1.45-5T) that an inspection of the building and low-income units or tenant record review will occur so that the project owner may notify tenants of the inspection or assemble tenant records for review.

(iv) If CDA elects to use the HUD REAC inspection protocol, CDA may follow the REAC requirements in lieu of the above inspection and certification requirements, subject to conditions in Treasury Regulation 1.45-5T and Rev. Proc. 2016-15.

(v) At the sole discretion of CDA, the review of annual certifications may be waived for buildings of which 50% or more of the aggregate basis (taking into account the

building and the land) is financed with the proceeds of tax-exempt bonds, if CDA has entered into an agreement with the tax-exempt bond issuer that requires the issuer to provide information concerning the income and rent of the tenants in the building. At its discretion, CDA may assume the accuracy of the information provided by the tax-exempt bond issuer without verification, or seek such additional verification as it deems appropriate. CDA will review the information and determine that the income limitation and rent restriction of §§42(g) (1) and (2) of the Internal Revenue Code are met. If the information is not sufficient for CDA to make this determination, CDA will request the necessary additional rent and income information from the project owner. CDA will notify the project owner in writing if no evidence of noncompliance has been found.~~; and~~

(vi) The Internal Revenue Code allows an exemption for buildings with 100% LIHTC units from the annual tenant recertification requirements set forth in Sections 42(g)(8)(B), 1.42-5(b)(1)(vi) and (vii), and 1.42-5(c)(1)(iii) of the Internal Revenue Code, but allows states to set more stringent standards.CDA will administer the annual tenant recertification requirement exemption as follows:

- This exemption will not automatically apply to projects with the following financing or funding sources: Section 8 Project-Based Rental Assistance Program, Rural Housing Service Program, and/or the Maryland Partnership Rental Housing Program. For these projects, the project owner should contact the funding source for its current requirements and contact CDA in order to apply for the exemption.

- Effective January 1, 2009, exempt projects are those meeting the following requirements: 1) 100% of the units in the project are ~~low income housing~~ LIHTC units; 2) 24 months have passed since the end of the calendar year when the last building in the project was placed in service so that at a minimum all initial households in the project have been recertified at least once; 3) CDA's first on-site physical inspection and file review process has been completed satisfactorily; and 4) the project has no outstanding or uncorrected issues of non-compliance.

  Once a project has met the requirements of subsection II above, the project owner will not be required to keep records that show an annual income recertification of all the low-income tenants in the building who have previously had their annual income verified, documented, and certified through the initial certification and the first annual recertification. However, the project owner must obtain from each household an annual self-declaration of income which will not be required to be verified and which must be maintained in the project tenant files. Projects covered by subsection I above and approved for the exemption by CDA, must also meet the requirements of subsection II above.

This exemption approved under this section remains in effect until the end of the 15-year compliance period. The recertification exemption will not prevent a project owner from having to produce documentation to verify the project owner's compliance with §42 of the Internal Revenue Code upon examination of the project owner's federal income tax return. The project owner must keep records and documentation that show the income of tenants upon initial occupancy of any residential unit in the building. Obtaining the exemption will also not prevent a project owner from having to satisfy the requirements of the compliance monitoring procedures adopted by CDA for compliance with §42 of the Internal Revenue Code. If the IRS or CDA determines that a project owner has violated §42 of the Internal Revenue Code in a manner that is sufficiently serious to warrant revocation, CDA may revoke the exemption.

(vii) A copy of the executed IRS Form(s) 8609, including Schedule A, for the project must accompany the submission of the owner's first year annual certification. CDA will separately report its compliance monitoring findings, if applicable, annually to the IRS on Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition."

H.5 Inspection

(i) CDA has the right to perform an on-site inspection of any low-income housing project throughout the Extended Use Period applicable to the buildings in the project. This inspection provision is separate from any review of low-income certifications, supporting documents, and rent records.

(ii) Inspection standard. For the on-site inspections of buildings and low-income units required above, CDA will review any local health, safety, or building code violations reports or notices retained by the project owner and will determine:

a. Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

b. Whether the buildings and units satisfy, as determined by CDA, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under § 42 of the Internal Revenue Code must continue to satisfy these codes and, if CDA becomes aware of any violation of these codes, CDA will report the violation to the IRS. However, provided CDA determines by inspection that the HUD standards are met, CDA is not required to determine by inspection whether the project meets local health, safety, and building codes.

H.6 Notification of Non-Compliance

Notice to Project Owner.

CDA will provide prompt written notice to the project owner of a low- income housing project if it does not receive the required annual certifications; does not receive all compliance monitoring fees when due; does not receive for compliance review any requested tenant income certifications, supporting documentation, or rent records; or discovers by inspection, review, or in some other manner that the project is not in compliance with the provisions of §42 or the Maryland LIHTC Program. Each notice will specify a period (the Correction Period), not to exceed 90 days from the date of the notice, within which the project owner must supply any missing certifications and bring the project into compliance with the provisions of §42 of the Internal Revenue Code and the Maryland LIHTC Program. CDA may extend the Correction Period for up to six months for good cause.

Notice to Internal Revenue Service.

CDA will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the Correction Period and no earlier than the end of the Correction Period, whether or not the noncompliance or failure to certify is corrected. CDA will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the project owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project under §42(c) (1) (A) of the Internal Revenue Code is noncompliance that must be reported to the IRS. If the noncompliance or failure to certify is corrected within 3 years after the end of the correction period, CDA will file Form 8823 with the IRS reporting the correction of the noncompliance or failure to certify.

H.7 Retention of Records by CDA

CDA will retain records of noncompliance or failure to certify for six (6) years following CDA's filing of the related IRS Form 8823. In all other cases, CDA will retain the certifications and records for three (3) years from the end of the calendar year in which CDA receives them.

H.8 Compliance Monitoring Fees

CDA shall charge an annual compliance-monitoring fee for all low-income housing projects of $30.00 per unit; as detailed in Section C.3. The fee shall be applicable to all rent or income restricted units in all new and existing low-~~-~~income housing projects receiving LIHTC. The fee will be charged on or about January 1 of each year for the preceding calendar year. Fees may be adjusted at the discretion of CDA to cover increases in compliance monitoring expenses generally, or in the case of instances of noncompliance of~~at~~ a particular project, at such project.

CDA depends upon prompt remittance of compliance monitoring fees by project owners to fund its compliance monitoring activities. Since nonpayment of fees by a project owner may cause CDA to fail to meet its obligations under the Internal Revenue Code, CDA may treat the

nonpayment of compliance monitoring fees as a decision on the part of that project owner to withdraw the project from the Maryland LIHTC Program, and CDA may report the withdrawal to the IRS.

H.9 Compliance Monitoring Re-Review Fee

CDA shall charge a re-review fee of $25.00 per unit per occurrence, as detailed in Section C.3. The fee is for the review of the documentation submitted by the Sponsor to correct noncompliance previously reported by the IRS on an uncorrected Form 8823. The correction must occur within 3 years after the end of the correction period and will be reported to the IRS on a corrected Form 8823.

H.10~~9~~ Changes in Monitoring Procedures

CDA reserves the right, without amending this Allocation Plan, to modify any and all compliance monitoring, reporting and notification procedures and requirements as necessary to comply with changes in applicable industry standards or federal law or regulations.

I. Miscellaneous

I.1 Subsidy Layering Review

HUD is required to undertake subsidy layering reviews of each project receiving HUD housing assistance to ensure that sponsors do not receive excessive government subsidies by combining HUD housing assistance with other forms of federal, State, or local assistance. For projects that combine HUD assistance with LIHTC, HUD has delegated the subsidy layering review to CDA. This delegation ~~does not~~ includes subsidy layering reviews for proposed Section 8 Project Based Voucher Housing Assistance Payments contracts. HUD and CDA have entered into a Memorandum of Understanding (MOU) governing the procedures that CDA must follow when undertaking its delegated subsidy layering review. Generally, the fee limits for a developer's fee, overhead, builder's profit, and other fee limits set forth in this Allocation Plan and the ~~Program~~ Guide will be applied by CDA in its subsidy layering review. Copies of the MOU are available from CDA upon request. CDA will complete the subsidy layering review for applicable projects after the sponsor and HUD submit relevant documentation for review. This information includes a copy of HUD's firm commitment and underwriting analysis, the sponsor's proposed development costs, and information concerning any syndication of the project. Specific documentation required by CDA includes those items referenced in HUD's guidelines and implementing instructions. CDA will undertake its delegated subsidy layering review for each project after completion of HUD's and CDA's underwriting, if applicable. CDA will complete a second subsidy layering review at the time the IRS Form 8609 is issued for the project.

CDA reserves the right, without amending this Allocation Plan, to amend its subsidy layering procedures as necessary to comply with changes in applicable federal law or regulations, HUD guidelines, or the MOU.

I.2 Qualified Contracts

If a project owner makes a request to CDA to obtain a "Qualified Contract" (as defined by the Internal Revenue Code) pursuant to §42(h)(6)(E) and (F), the project owner shall furnish to CDA and/or any other parties to the Qualified Contract with such information as CDA shall require including, but not limited to: past and current operating expense and occupancy data; evidence of tenant notification; financial statements; environmental assessments; and past, pending, or threatened litigation. CDA reserves the right to adopt such additional requirements and procedures as are desirable in order to enable it and project owners to comply with any future requirements imposed by the IRS through the Internal Revenue Code.

I.3 Correspondence and Submittals

All correspondence and submittals to be given to CDA pursuant to this Allocation Plan, for matters involving the application, reservation and allocation, and compliance monitoring processes shall be in writing and sent or delivered to:

Community Development Administration
Maryland Department of Housing and Community Development
7800 Harkins Road
Lanham, Maryland 20706
Attention: Tax Credit Administrator
taxcredits.dhcd@maryland.gov

I.4 Partial Invalidity

If any provision of this Allocation Plan, or the application of this Allocation Plan to any person or circumstances, is found by a court to any extent to be invalid or unenforceable, the remainder of this Allocation Plan, or the application of that provision to persons or circumstances other than those with respect to which it is held invalid or unenforceable, shall not be affected. Each provision of this Allocation Plan shall be valid and enforceable to the fullest extent permitted under State or federal law.

I.5 Disclaimer

In making an allocation of LIHTC to a project owner, CDA will determine, based solely on information submitted in the project owner's application, that the low-income housing project, if completed as proposed in the application, will qualify for an allocation of LIHTC. CDA will neither underwrite the project nor certify that any building in a project will actually meet the requirement necessary to qualify for LIHTC. CDA will not perform any independent investigation as to the initial qualification of any building for LIHTC and will not perform any subsequent investigation or otherwise monitor the project or any building for eligibility for LIHTC in the future, except as required by law. CDA will make no representation concerning the eligibility of any building in a project for LIHTC, the ability of any project owner or investor in a project to use LIHTC, or the status of a project as a "qualified low-income housing project" as that term is defined under §42 of the Internal Revenue Code. **The Internal Revenue Service is not**

bound by determinations made by CDA in the allocation of LIHTC or the monitoring of project compliance.

Neither CDA, nor its officers, employees, agents, or authorized representatives will bear any liability to any project owner, investor, tenant, lender, or any other person or entity for any claim arising out of a project or the Maryland LIHTC Program. The applicant, sponsor, developer, and project owner are not the agents of CDA and have no authority to act on behalf of or bind CDA or its officers, employees, agents, or representatives. This limitation of liability applies not only to matters related to the Maryland LIHTC Program but also to any matter or claim involving the acquisition, development, financing, project ownership, operation, or management of any building or project, including an applicant's, project owner's, developer's, sponsor's, or any other party's failure to comply with any federal, state, or local environmental, labor, housing, employment discrimination, permitting, zoning, or land use law, regulation, or requirement.

No officer, employee, agent, or authorized representative of CDA shall be personally liable in any matter arising out of the administration of the Maryland LIHTC Program, including the undertakings or obligations set forth in this Allocation Plan or in any other document or agreement executed or delivered in conjunction with the Maryland LIHTC Program.

Lenders and investors should consult with their own tax or investment counsel to determine whether a project qualifies for LIHTC, whether a lender on foreclosure or an investor may use LIHTC, and whether any project is commercially feasible.

APPENDIX A

Maryland Department of Housing and Community Development

MULTIFAMILY RENTAL FINANCING ~~PROGRAM~~ GUIDE