



# MONTANA HOUSING

- Meeting Location:** **Yogo Inn**  
211 East Main, Lewistown MT 59457  
Phone 406.535.8721
- Date:** Tuesday, September 10, 2019
- Time:** 8:30 a.m.
- Chairperson:** Pat Melby
- Remote Attendance:** Join our meetings remotely via webinar and Conference Call.
- Conference Call:** Dial (877) 273-4202, Access Code: 7233056#
- Register for Webinar:** Click: <http://housing.mt.gov/About/MBOH/Meetings>
- Board Offices:** Montana Housing  
301 S Park Ave., Room 240, Helena MT 59601  
Phone: 406.841.2840

## AGENDA ITEMS

- ❖ Meeting Announcements
- ❖ Introductions - Sign in on our attendance sheet.
- ❖ Public Comments - Public comment is welcome on any public matter that is not on the agenda and that is within the jurisdiction of the agency.

## Minutes

- ❖ Approve Prior Board Meeting Minutes

## Finance Program (Manager: Ginger Pfankuch)

- ❖ Financial Update

## Homeownership Program (Manager: Vicki Bauer)

- ❖ New Lender Approvals (if needed)
- ❖ Homeownership Update

*The Board of Housing's mission is to create affordable housing opportunities for Montanans whose needs are not met by the market. We value people, families, communities, fairness, teamwork, mutual respect, integrity. We are committed and passionate about collaborating with our partners to make sure Montana's families and communities have attainable, affordable, accessible and sustainable homes.*



# MONTANA HOUSING

## Mortgage Servicing (Manager: Mary Palkovich)

- ❖ Servicing Update

## Multifamily Program (Manager: Mary Bair)

- ❖ 2021 Qualified Allocation Approval
- ❖ Bond Resolutions (if necessary)
- ❖ Reverse Annuity Mortgage Exceptions (if necessary)
- ❖ Multifamily Update

## Operations (Cheryl Cohen)

- ❖ Freddie Mac Resolution
- ❖ Operations Update

## Executive Director (Bruce Brensdal)

- ❖ Update

## Miscellaneous

### Meeting Adjourns

\*All agenda items are subject to Board action after public comment requirements are fulfilled.

\*We make every effort to hold our meetings at fully accessible facilities. Any person needing reasonable accommodation must notify the Housing Division at 406.841.2840 or TDD 406.841.2702 before the scheduled meeting to allow for arrangements.

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# 2020 CALENDAR

January						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April						
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July						
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October						
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25	26	27	28	29	30	31

February						
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16	17	18	19	20	21	22
23	24	25	26	27	28	29

May						
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24	25	26	27	28	29	30
31						

August						
Su	Mo	Tu	We	Th	Fr	Sa
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30	31					

November						
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29	30					

March						
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29	30	31				

June						
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28	29	30				

September						
Su	Mo	Tu	We	Th	Fr	Sa
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27	28	29	30			

December						
Su	Mo	Tu	We	Th	Fr	Sa
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27	28	29	30	31		

## October 2019

19-22 – NCSHA Annual Conference – Boston  
28 - Board Meeting – Helena – Housing Credit Award

## November 2019

No Board Meeting

## December 2019

No Board Meeting

## January 2020

No Board Meeting

## February 2020

No Board Meeting

## March 2020

No Board Meeting  
9-11 – NCSHA Legislative Conference – Washington DC

## April 2020

6 – Board Training – Butte  
7 – Board Meeting – Butte

## May 2020

18 – Board Meeting – Helena – Housing Credits Letter of Intent Presentations

19 – Board Meeting – Helena – Housing Credits Full Application Selection

## June 2020

15 – Board Meeting – Helena  
15-17 – Housing Partnership Conference – Helena

## July 2020

No Board Meeting

## August 2020

5 – Board Meeting – Webinar

## September 2020

7 – Strategic Planning – Missoula  
8 – Board Meeting – Missoula

## October 2020

19 – Board Meeting – Helena – Housing Credits Award  
24-27 – NCSHA Annual Conference – New Orleans

## November 2020

No Board Meeting

## December 2020

No Board Meeting



# MONTANA HOUSING

Webinar – 301 S. Park Avenue, Suite 226, Helena MT 59601  
August 7, 2019

## **ROLL CALL OF BOARD**

### **MEMBERS:**

Patrick Melby, Chairman (Present)	Sheila Rice (Excused)
Bob Gauthier (Excused)	Eric Schindler (Present)
Johnnie McClusky (Present)	Amber Parish (Present)
Jeanette McKee (Present)	

### **STAFF:**

Bruce Brensdal, Executive Director	Cheryl Cohen, Operations Manager
Mary Bair, Multifamily Program	Vicki Bauer, Homeownership Program
Penny Cope, Research & Outreach Specialist	Ginger Pfankuch, Finance Program
Paula Loving, Executive Assistant	Kellie Guariglia, Multifamily Program
Jeannene Maas, Multifamily Program	

### **COUNSEL:**

Greg Gould, Luxan and Murfitt	John Wagner, Kutak Rock
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### **UNDERWRITERS:**

Mina Choo, RBC Capital	Patrick Zhang, RBC Capital
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### **OTHERS:**

Andrew Chanania, AC Solutions	Liz Mogstad, Rocky Mountain Development Council
Jennifer Wheeler, Glacier Bank	Rachel Mokry, US Bank
Shyla Patera	Thomas Mannschreck, Thomas Development
Alex Burkhalter, Housing Solutions	Larry Phillips, NeighborWorks Montana

*\*All persons listed present by telephone/webinar only*

*These written minutes, together with the audio recordings of this meeting and the Board Packet, constitute the official minutes of the referenced meeting of the Montana Board of Housing (MBOH). References in these written minutes to tapes (e.g., FILE 1 – 4:34) refer to the location in the audio recordings of the meeting where the discussion occurred, and the page numbers refer to the page in the Board Packet. The audio recordings and Board Packet of the MBOH meeting of this date are hereby incorporated by reference and made a part of these minutes. The referenced audio recordings and Board Packet are available on the MBOH website at [Meetings and Minutes](#).*

## **CALL MEETING TO ORDER**

- 0:00 Chairman Pat Melby called the Montana Board of Housing (MBOH) meeting to order at 8:30 a.m.
- 0:55 Introductions of Board members and attendees were made.
- 2:45 Chairman Melby asked for public comment on items not listed on the agenda.

## **APPROVAL OF MINUTES**

### **June 17, 2019 MBOH Board Meeting Minutes – page 4 of packet**

- 2:55 Motion: Eric Schindler  
Second: Jeanette McKee
- The June 17, 2019 MBOH Board meeting minutes were approved unanimously.

## **FINANCE PROGRAM**

### **Finance Update – page 8 of packet**

- 3:45 Presenters: Ginger Pfankuch

## **HOMEOWNERSHIP PROGRAM**

### **2019 Series C Bond Resolution – page 10 of packet**

- 5:10 Presenters: Vicki Bauer, John Wagner – Kutak Rock
- Motion: Jeanette McKee  
Second: Eric Schindler
- The 2019 Series C Bond Resolution No. 19-0211-SF02 was approved unanimously.

### **Homeownership Update – page 16 of packet**

- 9:45 Presenters: Vicki Bauer

## **MORTGAGE SERVICING PROGRAM**

### **Servicing Update – page 19 of packet**

- 14:50 Chairman noted the dashboard for review.

## **MULTIFAMILY PROGRAM**

### **Review 2021 Qualified Allocation Plan – page 20 of packet**

- 16:05 Presenters: Mary Bair
- The Draft 2021 Qualified Allocation Plan will be posted for public comment.

### **Red Alder – Helena – Bond Resolution 19-0807-MF01 – page 87 of packet**

- 48:40 Presenters: Mary Bair, Liz Mogstad – Rocky Mountain Development Council
- Motion: Johnnie McClusky  
Second: Jeanette McKee

The Red Alder – 4% Bond Resolution No. 19-0807-MF01 was approved unanimously.

**Emporda – Corvallis – Bond Resolution 19-0807-MF02 – page 96 of packet**

52:15 Presenters: Mary Bair, Thomas Mannschreck

Motion: Jeanette McKee

Second: Eric Schindler

The Emporda – 4% Bond Resolution No. 19-0807-MF02 was approved unanimously as an Acquisition Rehabilitation project.

**Multifamily Update**

58:35 Presenters: Mary Bair

**OPERATIONS**

**Operations Update – page 105 of packet**

1:00:25 Presenters: Cheryl Cohen

**EXECUTIVE DIRECTOR**

**Executive Director Update – page 3 of packet**

1:05:35 Presenters: Bruce Brensdal

**MEETING ADJOURNMENT**

1:06:20 Meeting was adjourned at 9:40 a.m.

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Sheila Rice, Secretary

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Date

# BOARD AGENDA ITEM

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## PROGRAM

Accounting and Finance

## AGENDA ITEM

Financial Update

## BACKGROUND

The accounting department is currently preparing the financial statements for the fiscal year ending June 30, 2019. The Legislative Audit Division will begin their audit at the end of October. We are anticipating the release of the audited financial statement by the end of the calendar year on the Electronic Municipal Market Access (EMMA) website.

The Accounting and Finance Dashboard shows that 71.5% of the funds held by our Trustees were in Money Market at the end of June. This compares to approximately 60% last year at fiscal yearend. This is due to the unavailability of higher yielding investments during fiscal year 2019. During the Month of August, the highest yielding investment available was yielding 1.79% compared to 2.06% provided from Money Market. The Weighted Average Yield at June 30, 2019 for all investments was 2.63 which is up from 2.08 at 2018 fiscal year end.

Portfolio maturity as listed at the bottom of the first page is show in detail on the second page. The \$74 million showing as available now is comprised of the money market funds already discussed. The other maturities are a combination of U.S. Treasuries and other federally backed Securities.

The final Accounting and Finance page is the Balance Sheet information. This includes a comparison to the 2018 fiscal yearend figures. With the issuance of two bond series during fiscal year 2019, there was an increase in liabilities and a corresponding increase in mortgage loans receivable owing to loan purchases from the bond funds. Other mortgages loans and down payment assistance were provided with existing funds thus reducing cash and investments from the prior year ending balances.

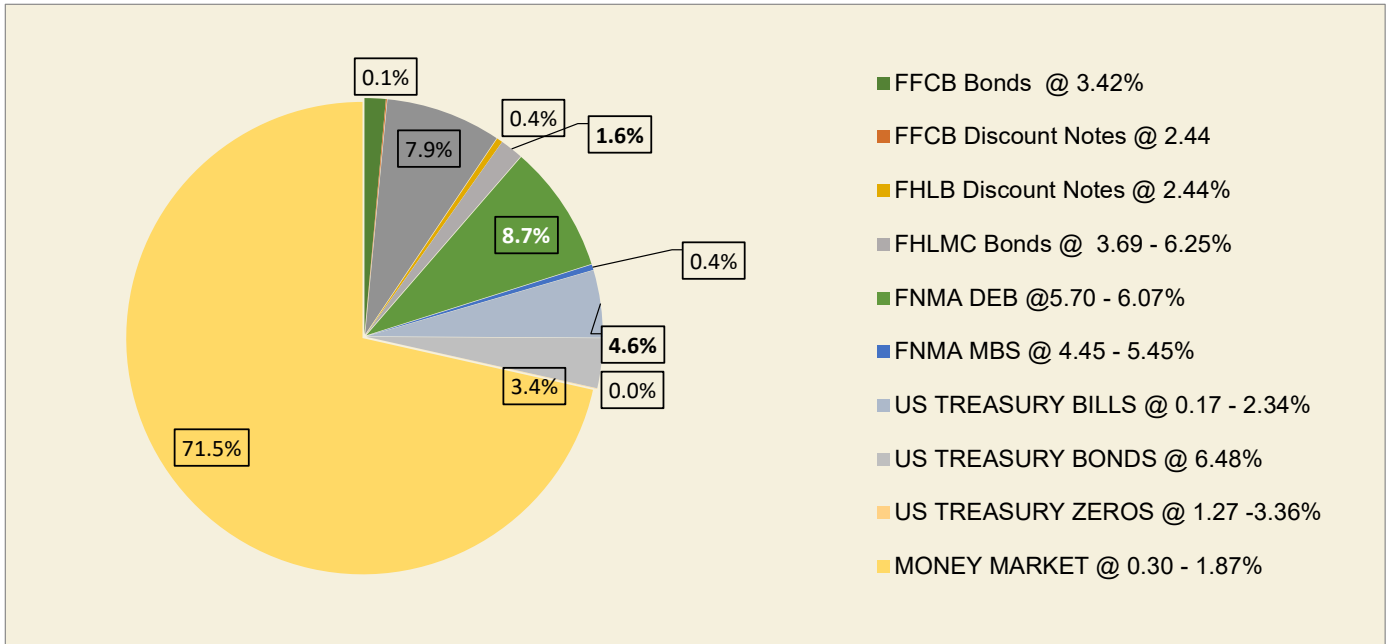
The overall net income before final adjustments was \$3.8 million compared to a loss in fiscal year 2018 of \$148 thousand. The increased income was partially due to an increase in fair market value of Board investments of approximately \$1.5 million and an increase in mortgage interest income of approximately \$1.7 million.

Board Meeting: September 10, 2019

# Accounting & Finance Dashboard

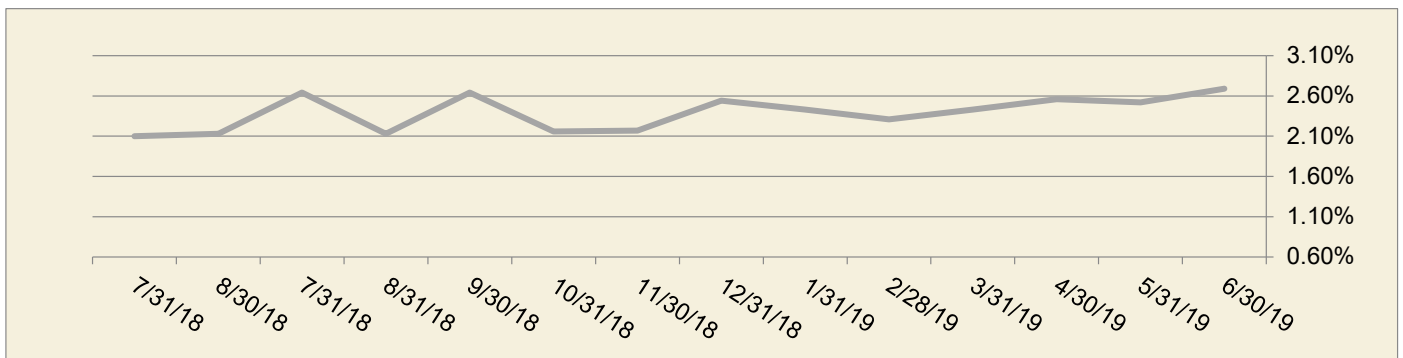
## Data as of June 30, 2019

### INVESTMENT DIVERSIFICATION



FNMA = Federal National Mortgage Association  
 FHLB = Federal Home Loan Bank  
 FHLMC = Federal Home Loan Mortgage Corporation  
 FFCB = Federal Farm Credit Bank

### WEIGHTED AVERAGE YIELD TREND



### PORTFOLIO MATURITY

For June 30, 2019

Available Now	< 1 year	1 to 5 years	6 to 10 years	11 to 15 years	16 to 20 years	21 to 25 years	Grand Total
\$ 74,171,024	\$ 7,179,000	\$ 13,155,000	\$ 17,114,000	\$ 2,225,000	\$ 525,266	\$ -	\$ 114,369,291



**Montana Board of Housing  
Accounting and Finance  
Investment Maturity Schedule  
June 30, 2019**

<b>Maturity Date</b>	<b>Trustee Bank</b>	<b>Investment Type</b>	<b>Par Value</b>
06/30/2019	US Bank Corporate Tr	US BANK MONEY M	3,264,247.53
06/30/2019	Wilmington Trust	WT GOLDMAN SACH	70,906,776.77
07/31/2019	US Bank Corporate Tr	T-BILLS	2,975,000.00
08/09/2019	US Bank Corporate Tr	FHLB DN	565,000.00
08/09/2019	US Bank Corporate Tr	FFCB DN	92,000.00
11/15/2019	Wilmington Trust	TSTRIPS	35,000.00
12/31/2019	Wilmington Trust	T-BILLS	2,102,000.00
01/30/2020	Wilmington Trust	T-BILLS	1,410,000.00
05/24/2021	Wilmington Trust	FFCB	1,230,000.00
11/29/2021	Wilmington Trust	FHLB	11,120,000.00
12/16/2024	Wilmington Trust	FFCB	805,000.00
08/15/2025	Wilmington Trust	T-NOTES & BONDS	4,796,000.00
04/30/2026	Wilmington Trust	FNMA DEB	4,613,000.00
09/27/2027	Wilmington Trust	FNMA DEB	4,070,000.00
11/26/2027	Wilmington Trust	FNMA DEB	3,635,000.00
07/15/2032	Wilmington Trust	FHLMC BOND	2,225,000.00
02/01/2036	Wilmington Trust	FNMA MBS	52,037.60
05/01/2036	Wilmington Trust	FNMA MBS	28,405.57
07/01/2036	Wilmington Trust	FNMA MBS	73,909.37
03/01/2037	Wilmington Trust	FNMA MBS	138,912.65
08/01/2037	Wilmington Trust	FNMA MBS	38,892.29
08/01/2038	Wilmington Trust	FNMA MBS	64,738.81
12/01/2038	Wilmington Trust	FNMA MBS	66,372.34
12/01/2039	Wilmington Trust	FNMA MBS	61,997.79
<b>Total</b>			<b>114,369,290.72</b>

FNMA = Federal National Mortgage Association

Fannie Mae

FHLB = Federal Home Loan Bank

FHLMC = Federal Home Loan Mortgage Corporation

Freddie Mac

FFCB = Federal Farm Credit Bank

**Montana Board of Housing**  
**Financial Data for month ending June 30, 2019**

<i>(Dollars in Thousands)</i>	<u>Current Month</u>	<u>Change</u>	<u>FYE18</u>
<b>Assets:</b>			
Cash and Cash Equivalents	86,661	(895)	87,556
Investments	49,291	(5,700)	54,991
Mortgage Loans Receivable, Net	523,822	57,053	466,769
Corporate Advance	357	(564)	921
Interest Receivable	4,222	(476)	4,698
Prepaid Interest	165	2	163
Acquisition Costs	1,927	17	1,910
Capital Assets, Net	1	-	1
<b>Total Assets</b>	<u>666,446</u>	<u>49,437</u>	<u>617,009</u>
<b>Deferred Outflow of Resources</b>	<u>791</u>	<u>(36)</u>	<u>827</u>
<b>Liabilities:</b>			
Accounts Payable	3,061	2,634	427
Funds Held for Others	6,245	(968)	7,213
Accrued Interest - Bond Payable	1,465	-	1,465
Bonds Payable, Net	493,225	41,356	451,869
Arbitrage Rebate Payable	1,124	472	652
Accrued Compensated Absences	302	22	280
Net Pension Liability	2,420	141	2,279
OPEB Liability	52	-	52
<b>Total Liabilities</b>	<u>507,894</u>	<u>43,657</u>	<u>464,237</u>
<b>Deferred Outflow of Resources</b>	<u>92</u>	<u>11</u>	<u>81</u>
Revenues	28,208	7,357	20,851
Expenses	24,401	3,402	20,999
<b>Income (Loss)</b>	<u>3,807</u>	<u>3,955</u>	<u>(148)</u>

**NOTE:** Information supplied above is unaudited and does not conform to GASB requirements

# Homeownership Program Dashboard

August 30, 2019

## RATES

	<u>CURRENT</u>	<u>LAST MONTH</u>	<u>LAST YEAR</u>
MBOH	3.50	3.75	4.00
Market	3.48	3.58	4.41
10 yr treasury	1.50	2.06	2.86
30 yr Fannie Mae	3.01	3.37	4.21

## LOAN PROGRAMS

	<u>AUG RESERVATIONS</u>	<u>AMOUNT</u>	<u>TOTAL NUMBER</u>	<u>AMOUNT</u>	<u>ORIGINAL AMOUNT</u>	<u>BALANCE</u>
<b>REGULAR PROGRAM</b>						
Series 2019B(6.7.19)	24	4,582,566	103	17,617,179	30,000,000	12,382,821
2019B DPA(6.7.19)	17	141,395	36	258,908	880,000	621,092
80% Combined (20+)	1	204,800	104	13,741,759	reg bond	
<b>OTHER PROGRAMS</b>						
Veterans (Orig)	7	1,479,585	319	60,232,113	Revolving	7,355,453
910 Mrtg Cr Cert (MCC)	13	2,994,896	202	45,244,846	60,000,000	14,755,154
<b>SET-ASIDE PROGRAMS</b>						
MBOH Plus	4	22,450	378	2,256,950	Revolving	84,549
Set-aside Pool (7.1.19)	5	807,995	9	1,302,243	FY2020	
<i>NeighborWorks</i>	1	186,363	3	380,958		
<i>CAP NWMT CLT</i>						
<i>Missoula HRDC XI</i>						
<i>Bozeman HRDC IX</i>	1	142,950	3	442,603		
<i>Home\$tart</i>						
<i>HUD 184</i>						
<i>Dream Makers</i>						
<i>Sparrow Group</i>	1	137,464	1	137,464		
<i>City of Billings</i>	2	341,218	2	341,218		
Foreclosure Prevent	0	0	0	0	50,000	50,000
Disabled Accessible	0	0	227	16,497,050	Ongoing	862,950
Lot Refi	0	0	12	1,273,560	2,000,000	726,440
FY20 Habitat	0	0	3	370,000	3,377,290	3,007,290
Montana Street	0	0	4	386,910	1,000,000	613,090
Lee Gordon Place	0	0	6	814,642	1,045,000	230,358

## JULY CHANGES

	<u># loans</u>	<u>Princ Bal</u>	<u>2019 YTD # loans</u>	<u>Princ Bal</u>
<b>June Balance</b>	<b>5,550</b>	<b>501,683,461.11</b>	<b>5,517</b>	<b>495,617,049.34</b>
July Purchases (1st)	54	9,564,287.66	255	42,846,388.82
July Purchases (2nd)	33	209,503.00	118	711,825.00
July Amortization		(1,359,880.92)		(9,208,790.74)
July Payoffs	(37)	(3,160,374.49)	(274)	(21,791,875.81)
July Foreclosures	-	-	(16)	(1,237,600.25)
<b>July Balance</b>	<b>5,600</b>	<b>506,936,996.36</b>	<b>5,600</b>	<b>506,936,996.36</b>

## DELINQUENCY AND FORECLOSURE RATES

### MONTANA BOARD OF HOUSING

### MORTGAGE BANKERS ASSOC. 6/2019

(most recent available)

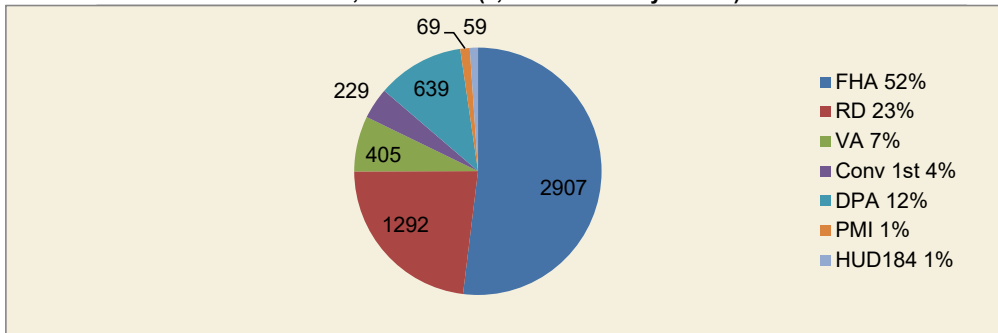
	<u>Jul-19</u>	<u>Jun-19</u>	<u>Jul-18</u>	<u>Montana</u>	<u>Region</u>	<u>Nation</u>
30 Days	1.00	1.64	1.62	1.64	1.97	2.59
60 Days	0.68	0.61	0.82	0.50	0.55	0.78
90 Days	<u>0.50</u>	<u>0.55</u>	<u>0.55</u>	<u>0.53</u>	<u>0.62</u>	<u>1.04</u>
Total Delinquencies	2.18	2.80	2.99	2.67	3.14	4.41
In Foreclosure	0.57	0.50	0.51	0.52	0.46	0.90

## LOAN PURCHASES BY LENDER

	JULY		2019 YTD	
	<u>1st</u>	<u>DPA</u>	<u>1st</u>	<u>DPA</u>
FIRST SECURITY BOZEMAN 061	1		10	5
1ST COMMUNITY BK GLASGOW 095	3	3	7	6
1ST SECURITY BK MISSOULA 133			6	
VALLEY BANK RONAN 159	1		2	
YELLOWSTONE BANK BILLINGS 161			1	1
BIG SKY WESTERN BANK 165			1	
FIRST MONTANA BANK, BUTTE 172			1	
AMERICAN BANK CENTER 186	1	1	2	2
BANK OF BRIDGER 354	1		1	
STOCKMAN BANK OF MT MILES 524	5	2	30	12
FIRST INTERSTATE BANK-WY 601	4		19	7
U.S. BANK N.A. 617			1	
OPPORTUNITY BANK 700	5	3	29	12
FIRST FEDERAL BANK AND TRUST 731	1	1	3	2
WESTERN SECURITY BANK 785	1		3	
GLACIER BANK KALISPELL 735			7	
MANN MORTGAGE 835	9	9	41	25
GUILD MORTGAGE COMPANY 842	7	5	22	11
UNIVERSAL 843	2	2	16	9
FAIRWAY INDEPENTENT MRTG 847	6	4	30	15
CORNERSTONE HOME LENDING 850			1	
BAY EQUITY LLC 853	1	1	5	5
LENDUS LLC 854	4	2	14	6
MISSOULA FEDERAL C U 901	2		3	
Grand Count	54	33	255	118

### MBOH JULY PORTFOLIO

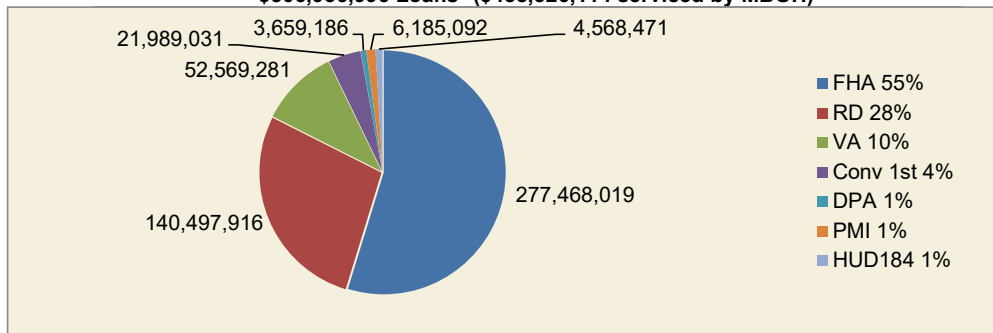
**5,600 Loans\* (4,845 serviced by MBOH)**



**Weighted Average  
Interest Rate  
4.12%**

\*This a 6.44% increase in number of loans from July 2018 when we had 5,261 loans

**\$506,936,996 Loans\* (\$438,326,114 serviced by MBOH)**



\*This a 11.10% increase in portfolio size from July 2018 when we had \$456,298,944 loans

## LENDER/REALTOR/PARTNER OUTREACH

<u>Date</u>	<u>Event</u>
9-Jul Julie	Webinar Training - Cherry Creek Mortgage
17-Jul Julie	Homebuyer Ed in Great Falls
23-Jul Julie	Webinar Training - Guild Mortgage
July 26 - 27 Julie	MT Independent Banker Conference
8-Aug Julie	Webinar Training - American Bank Center
27-Aug Julie	Webinar Training - Cherry Creek Mortgage
30-Aug Julie	Webinar Training - Cornerstone Home Lending

<b>FY 2019 MBOH Homeownership Program</b>	<b>Bond Program</b>	<b>MCC Program</b>	<b>TOTAL</b>
# of loans originated (First & Second)	911	140	1,051
\$ of home sales (First only)	\$117,288,304	\$32,559,715	\$149,848,019
\$ of loans originated (First & Second)	\$113,936,025	\$30,518,547	\$144,454,572
<b>NEW HOMES (First Only)</b>			
# of loans on New houses	37	13	50
\$ of home sales on New houses	\$7,368,761	\$3,404,839	\$10,773,600
\$ of loans on New houses	\$6,372,811	\$3,143,896	\$9,516,707
<b>EXISTING HOMES</b>			
# of loans on Existing houses	624	127	751
\$ of home sales on Existing houses	\$109,919,543	\$29,194,876	\$139,114,419
\$ of loans on Existing houses	\$106,049,450	\$27,374,651	\$133,424,101
<b>REHABBED HOMES</b>			
# of Rehab loans	0	0	0
\$ of home sales on Rehab houses	\$0	\$0	\$0
\$ of loans on Rehab houses	\$0	\$0	\$0
<b>STICK-BUILT HOMES</b>			
# Stick built homes	553	107	660
\$ of home sales on stick-built homes	\$97,728,020	\$24,670,165	\$122,398,185
<b>MANUFACTURED HOMES</b>			
# Manufactured homes	55	5	60
\$ of home sales	\$10,066,750	\$1,257,500	\$11,324,250
<b>MODULAR HOMES</b>			
# Modular homes	3	0	3
\$ of home sales on Modular homes	\$478,038	\$0	\$478,038
<b>CONDOS</b>			
# Condos	13	15	28
\$ of home sales on Condos	\$207,900	\$3,437,200	\$3,645,100
<b>TOWNHOMES</b>			
# Townhomes	37	13	50
\$ of home sales on Townhomes	\$6,937,596	\$32,599,715	\$39,537,311
Average Sales price (first loans)	\$177,441	\$232,569	\$187,076
Average Loan (first loans)	\$170,079	\$217,990	\$178,453
Average Household size	2	2	
Average Borrower age	35	35	
Average Household Income	\$51,940	\$56,542	\$54,241
Number of Communities receiving loans	96	25	
Number of Counties receiving loans	41	10	
<b>Setasides, special programs and 2nd loans</b>			
	<b>Setaside 1st</b>	<b>DPA 2nds</b>	
Number of loans	131	250	381
Number utilized during the year	10	2	
\$ of home sales	\$22,465,618	\$45,569,150	\$68,034,768
\$ of home loans	\$2,014,043	\$1,513,764	\$3,527,807
Average Income	\$50,289	\$57,006	
Number of Communities receiving loans	32	59	

# BOARD AGENDA ITEM

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## PROGRAM

Multifamily Program

## AGENDA ITEM

2021 Qualified Allocation Plan

## BACKGROUND

Every state Housing Credit allocating agency is required by Section 42 to have a Qualified Allocation Plan (QAP). The Housing Credits are awarded once a year. The QAP is the rulebook for the Housing Credit Program for the year. This is the proposed Montana QAP for 2021.

## PROPOSAL

The 2021 QAP draft has been created by staff working with developers and other interested parties in the open annual roundtable. Changes were made to update the QAP in an effort to clarify and change processes. A Public Hearing was held on August 22, 2019. Commenters have submitted written comment.

Staff is presenting the 2021 QAP for board members to consider and proposes approval of the document. Written Public Comments received will be presented as well as an active discussion of the proposed processes.



August 22, 2019

Montana Board of Housing  
PO Box 200528  
Helena MT 59620-0528

**RE: 2021 MBOH Housing Credit QAP Public Comment**

Dear MBOH,

We have had the opportunity to review the latest changes in the proposed draft QAP. Of course, there are the many refinements made in many areas for program annual changes, but this year there are several important topics that have a material impact on the financial feasibility of new projects, and the ongoing financial health of affordable housing portfolios and sponsors in Montana. We urge the MBOH to strongly consider all perspectives on these topics, including the risk developers/owners take on with these projects and creating more opportunity to utilize the Tax Exempt Bond / 4% Tax Credit ("Bond") resource in more locations in Montana.

**Income Averaging**

The new Income Averaging election ("IA") offers a great opportunity to create feasibility in more locations in Montana for Bond projects, and less reliance on the 9% tax credit program. While we appreciate and support staff's approach to create policy regarding income targeting outside of the QAP document for flexibility, we strongly disagree with the position that IA Bond projects should be limited to overall 58% income targeting. This position is having a very real impact on current and pipeline deals. For example, on a 96-unit project in our pipeline the difference between 58% and 60% targeting is \$580,000, add in the other targeting provisions proposed in the draft and that jumps to \$600,000. This represents over 6% in loan proceeds and could definitely impact whether a project moves forward or is abandoned. These variables are very powerful.

We hope MBOH realizes the true moment of opportunity the affordable housing community has in Montana right now to increase the production of units through the Bond program and Income Averaging. As you know GMD has been a very active participant in bringing more stand alone Bond and hybrid deals to Montana and it would like to continue doing so. Income Averaging brings a new opportunity to serve a much wider income band of households beyond 60% AMI. On a recent project you are familiar with, Starner Gardens in Billings, the IA election will increase the eligible households in that market by over 35%. Being able to target the "missing middle" households over 60% AMI should be seen as a positive because you are reaching more households that need housing, even if they are at higher incomes and rents.





Several of the provisions regarding income targeting for IA projects in this draft QAP use old 9% tax credit thinking about achieving more lower income targeting, which the 9% tax credit can support because it is so powerful. Bond deal feasibility in Montana however is a very fragile thing. It should be the goal of MBOH to give the possibility of feasibility to more Bond deals which could target 50%-70% of AMI at the full 60% average AMI. The 50% AMI units are truly affordable units in Montana, and the 70% AMI units help create their feasibility using the Bond program. These more restrictive provisions will result in less Bond deals getting done going forward. Even if MBOH only looks at the 50% units as being the goal to create, every new Bond deal (which are usually about 100 units for scale) creates 50 units at 50% AMI. There is no doubt the State of Montana will get more 50% units created if they do not dilute the income potential of Bond IA deals, a lot more, just two more Bond deals could create an additional 100 units at 50% of AMI. That is meaningful in Montana. MBOH should realize they will create more truly affordable units by letting Bond IA projects achieve the highest income targeting, not lower, because more deals will get done. I realize that may seem opposite to traditional industry thinking, but from the front lines of the Bond feasibility battle we wage every day I can tell you that is a fact.

To ensure the largest number of affordable units are created in Montana using the Bond program GMD Development strongly encourages MBOH to allow Bond IA deals to target the full 60% average AMI and there be no additional lower income targeting as inserted in section B. Minimum Set Aside (pg. 11). These type of lower targeting units are created in the 9% program. The acceptability of perceived higher tax credit compliance risk at the full 60% average targeting to the owner and investor should be determined by them, not MBOH. Everyone in the industry realizes IA deals will be more compliance work, but the benefits of greater deal feasibility and reaching more households more than trumps a little more work. Let the sponsor get the investors comfortable with the full 60% average targeting, with the benefit of more deal feasibility, rather than having MBOH limiting what the program can achieve in unit production just because they are trying to satisfy investor comments on the topic. Investors are flexible on this point, there is no industry standard on this, let the sponsor negotiate with the investor on this point, don't impose an arbitrary limit on income targeting, allow more deal feasibility and let sponsors do what they do best.

### **Property Tax Exemption**

We support maintaining the intent of the original TE legislation requiring 50% of the units at 50% of AMI. Thank you for recognizing hybrid deals. We feel this policy dovetails nicely with IA Bond deals by creating better deal feasibility in more locations, creating truly affordable 50% AMI units, and helping the missing middle at 60-70% AMI. Another suggestion, depending on how much geographic diversity you want, why not allow some projects, specifically TE Bond / 4% deals that are not in 130% zones to obtain real estate tax exemption with all units at 60% of AMI income and rent.



### **Maximum Rents**

GMD understands the tremendous impact large rent increases have on lower income households, so much so we limited rent increases to 2-4% on our 1-2 bedroom units this spring after a 10% median income increase in Bozeman. While many areas are experiencing strong median income increases now, this has not always been the case, and the days of lower median income increases may be just around the corner again. These large med income increases are not the norm, and will end, and we are then back to the struggle against expenses. While GMD supports a cap on annual rent increases, it strongly opposes rent adjustments based on DCR or expense ratios. It is inappropriate for MBOH to only limit the income side of a deal when it is not offering any help with the operating expense exposure. MBOH should realize sponsors that have a portfolio of deals need some deals to be stronger, because there are always weaker ones. We already have minimum DSC covenants from our lenders, now you are proposing maximum DSC as well. It is becoming very difficult to “thread the needle” to manage these properties to all the requirements being put on them.

### **Cumulative Credit Maximum**

MBOH should realize that the timeline for tax credit projects is very long, from inception to 8609 can be 3-5 years. While the concept of a maximum cumulative credit is a good one to implement the amount should be increased to \$20 million or define the duration of a project as shorter, like at project construction completion.

We look forward to further discussion on these topics.

Sincerely,

A handwritten signature in blue ink, appearing to be 'G. Dunfield', is written over the word 'Sincerely,'.

Gregory M. Dunfield  
President/Owner  
GMD Development

Perennial: IA at 60%

Unit Type	Description	Qty	HH Income Set Aside	Actual AMI Rent	Size	NRSF	Max Set-Aside Rent	Utility Allowance	Net LIHTC Rent	Monthly Gross Rent	Annual Gross Rent
1 BD	1-bdrm Type A	43	50%	50%	576	24,768	\$840	\$69	\$771	\$33,153	\$397,836
1 BD	1-bdrm Type A	42	70%	70%	576	24,192	\$1,176	\$69	\$1,107	\$46,494	\$557,928
2 BD	2-Bdrm Type A	5	50%	50%	816	4,080	\$1,008	\$87	\$921	\$4,605	\$55,260
2 BD	2-Bdrm Type A	6	70%	70%	816	4,896	\$1,411	\$87	\$1,324	\$7,944	\$95,328
<b>Total / average</b>		<b>96</b>	<b>Avg 60.0%</b>		<b>604</b>	<b>57,936</b>			<b>\$960</b>	<b>\$1,106,352</b>	<b>\$1,106,352</b>

NOI \$698,733  
 Loan \$11,435,343  
 Rate 4.00%  
 Amortization 35 years

NOI \$698,068  
 Loan \$11,756,931  
 Rate 4.00%  
 Amortization 40 years

Perennial: IA at 58%

Unit Type	Description	Qty	HH Income Set Aside	Actual AMI Rent	Size	NRSF	Max Set-Aside Rent	Utility Allowance	Net LIHTC Rent	Monthly Gross Rent	Annual Gross Rent
1 BD	1-bdrm Type A	50	50%	50%	576	28,800	\$840	\$69	\$771	\$38,550	\$462,600
1 BD	1-bdrm Type A	34	70%	70%	576	19,584	\$1,176	\$69	\$1,107	\$37,638	\$451,656
2 BD	2-Bdrm Type A	7	50%	50%	816	5,712	\$1,008	\$87	\$921	\$6,447	\$77,364
2 BD	2-Bdrm Type A	4	70%	70%	816	3,264	\$1,411	\$87	\$1,324	\$5,296	\$63,552
1 BD	1-bdrm Type A	1	60%	60%	576	576	\$1,008	\$69	\$939	\$939	\$11,268
<b>Total / average</b>		<b>96</b>	<b>Avg 58.0%</b>		<b>604</b>	<b>57,936</b>			<b>\$926</b>	<b>\$1,066,440</b>	<b>\$1,066,440</b>

NOI \$664,248  
 Loan \$10,870,973  
 Rate 4.00%  
 Amortization 35 years

**Lost Proceeds \$564,370**

NOI \$663,685  
 Loan \$11,177,855  
 Rate 4.00%  
 Amortization 40 years

**Lost proceeds \$579,076**

Perennial: IA at 58% with 30% units

Unit Type	Description	Qty	HH Income Set Aside	Actual AMI Rent	Size	NRSF	Max Set-Aside Rent	Utility Allowance	Net LIHTC Rent	Monthly Gross Rent	Annual Gross Rent
1 BD	1-bdrm Type A	46	50%	50%	576	26,496	\$840	\$69	\$771	\$35,466	<b>\$425,592</b>
1 BD	1-bdrm Type A	36	70%	70%	576	20,736	\$1,176	\$69	\$1,107	\$39,852	<b>\$478,224</b>
2 BD	2-Bdrm Type A	6	50%	50%	816	4,896	\$1,008	\$87	\$921	\$5,526	<b>\$66,312</b>
2 BD	2-Bdrm Type A	5	70%	70%	816	4,080	\$1,411	\$87	\$1,324	\$6,620	<b>\$79,440</b>
1 BD	1-bdrm Type A	3	30%	30%	576	1,728	\$504	\$69	\$435	\$1,305	<b>\$15,660</b>
<b>Total / average</b>		<b>96</b>	<b>Avg 57.9%</b>		<b>604</b>	<b>57,936</b>			<b>\$925</b>	<b>\$88,769</b>	<b>\$1,065,228</b>

NOI \$663,251  
 Loan \$10,854,653  
 Rate 4.00%  
 Amortization 35 years

**Lost Proceeds \$580,690**

NOI \$662,681  
 Loan \$11,160,942  
 Rate 4.00%  
 Amortization 40 years

**Lost proceeds \$595,989**

## Comment on the Draft 2021 Qualified Allocation Plan

### SECTION 3 – MONTANA SPECIFIC REQUIREMENTS

#### A. Eligible Applicants

We approve of this section in general. However, we do propose an addition to this section. The thrust behind this comment is the desire to see credits used timely and efficiently; we believe this echoes the sentiments of the Board.

Text to be Added:

*The maximum annual tax credit award to any one Applicant (as defined), Developer (as defined), or HC Consultant (as defined), including related persons thereof or agents thereof, or any person having an Identity of Interest (as defined) with any such Applicant, Developer, HC Consultant or related persons/agents thereof, or any combination of the foregoing, shall be \$1,500,000 in cumulative annual tax credits or two (2) In-Process Developments (as defined), whichever is more restrictive. The cumulative credits and In-Process Developments will include developments which have received current reservations, Carryover allocations (as defined), Credit Refreshes (as defined), additional credits awarded out of cycle, and will be defined as all credits outstanding until the development is Placed in Service (as defined). Tax Exempt Bond developments awarded tax credit will not be included in these credit limitations.*

*NOTE: In the event of co-sponsorship or co-development, the tax credit amount awarded to the development will be proportionately divided between the co-Sponsors or co-Developers and then be added to their respective cumulative tax credits on developments which have not yet Placed-in-Service. The percentages of co-sponsorship or co-development will be determined by the information disclosed in the tax credit application and will be later verified by MBOH staff's review of executed organization and development agreements if a tax credit award is received.*

Addition to definitions section of the 2021 QAP:

*"Identity of interest" or "related persons" means ownership of 50% or more of a separate entity of the development team ("Related Entity") by the sponsor or developer, alone or as part of a group of other persons or entities, or ownership of 50% or more of the respective sponsor or developer by the Related Entity. In this definition, an identity of interest is present even if the sponsor or developer has no voting rights in the Related Entity, or if the Related Entity has no voting rights in the respective sponsor or developer. Registered agents, executive directors, officers, employees, or family members of such sponsor, developer or Related Entity may be considered as "related persons."*

*“In Process Developments” means any development that has received an Initial Allocation (as defined) and has not yet been Placed in Service (as defined) or returned the credits to MBOH.*


Practically speaking, this will prevent an Applicant, Developer or HC Consultant/Consultant with either two outstanding projects or tax credits awarded up to 1.5 million that have not yet been placed in service (whichever is more restrictive) from receiving more credits prior to placing in service at least one of the prior projects. Traditionally the check on a developer’s ability to complete the project was the IRS requirement that the project be placed in service two years after December 31 of the year of the award. The recent development in Montana of “Credit Refreshes,” which serves a purpose and gives the board flexibility to work with challenging projects, has effectively removed the requirement for timely completion. The success of the LIHTC program is largely due to the efficiencies of pairing a government resource with private sector capital. In order to maintain these efficiencies, there must be standards for private sector performance. We are cognizant of the fact that too rigorous a standard might leave some developers ineligible for credits while they legitimately work to secure financing on a previously awarded project. We believe that the requirement of two outstanding projects or 1.5 million of credits not yet placed in service prior to disqualification strikes the balance of incentivizing developers to complete existing projects meanwhile allowing them the possibility to receive an additional award or project while they work through the development process on an existing project. Such a check on development capacity is also essential to maintaining the competitive base of Montana LIHTC developers. The proposed language will set a necessary baseline for developer performance. Over the last decade, the Board has been successful at (1) utilizing the Housing Tax Credit efficiently and (2) achieving successful public-private partnerships. Our desire is to see this legacy live on.

## Comment on the Draft 2021 Qualified Allocation Plan

### Section 3 – F. 1. Hard Cost Per Unit/Hard Cost Per Square Foot and Total Project Cost Per Unit/Total Project Cost Per Square Foot

We were unclear on the new language regarding the Costs Per Unit Limit Exceptions. In particular the language was not clear as to whether the determination to grant an exception would be made during the Board meeting in which the Board selects the LOIs for full application or, alternatively, at the Board meeting immediately prior to the LOI due date. We would propose the latter. If an applicant is seeking a waiver to the cost per unit limit, it makes more sense to receive this determination ahead of time, so the applicant doesn't commit resources to an LOI that is out of compliance with the QAP. Under this scenario we would propose that an applicant seeking a waiver must provide a request for a waiver to MBOH staff at least 14 days prior to the Board meeting preceding the LOI's due date and the Board determination of whether to grant a waiver be made at the meeting prior to the LOI due date.

Thank you for your consideration.

By:   
Name: Alex Burkhalter  
Organization: Housing Solutions, LLC

## Brensdal, Bruce

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**From:** Heather McMilin <Heather@homeword.org>  
**Sent:** Friday, August 23, 2019 4:08 PM  
**To:** Bair, Mary; Guariglia, Kellie; Brensdal, Bruce  
**Cc:** Andrea Davis; Matt Joseph  
**Subject:** Public Comment for the proposed Draft of the Montana 2021 QAP  
**Attachments:** HW 2021 QAP Public Comment.pdf

**Importance:** High

Mary, Kellie and Bruce,

Pleased see our attached Public Comment for the proposed Draft of the Montana 2021 QAP. We have concerns over several additions to this version of the QAP, primarily having significant impact on our portfolio's operations. Please let us know if you have any questions associated with this formal public comment.

In addition, we understand the policy on Income Averaging being in a separate document was intended for staff to be able to update in a less formal process for flexibility. We are concerned that we don't have an opportunity to give public comment or have input on this document. There may be a process planned, but without knowing that, we feel this should be discussed with the larger developer group for feedback. This is a significant policy that will affect a properties performance for the rest of its affordably period and may also limit our ability to maximize development of homes Montanans can afford. It should be required to use an equivalent formal process to the QAP. Please take these additional comments on what we could find to date. Thank you.

Comments on the current draft income averaging document available on the website:

We believe that setting the average for the Income Averaging at 58% is an unnecessary burden being placed on projects. Ultimately, it is the Owner and Property Manager's responsibility to ensure the project is in compliance with whatever targeting is elected. The QAP doesn't limit 40/60 project, requiring them to have 45% of the units at 60% AMI, nor the 20/50 in a similar fashion. While we realize that this is a new target category, it is no more difficult to manage than the other categories, and the penalties for failing to comply will be borne by the Project Owners and Property Managers, not Montana Housing or the State. The State should not therefore unnecessarily mitigate risks that the Property Owners and Investors will be carefully monitoring, since the punitive damages will be their responsibilities. Some of the other monitoring requirements in the draft document also seem inappropriately burdensome – for instance, why would average rents need to be submitted quarterly? Why should rents plus subsidy be capped at max LIHTC rents for 20 and 30 percent units? These requirements will not allow us to best utilize this new opportunity to broaden the affordability bandwidth and increase potential production of homes that Montanans can afford.

Thank you in advance for your consideration,  
Heather

Heather McMilin HCCP  
Housing Development Director  
Homeword, Inc.  
Ph: (406) 532-4663 x36  
[www.homeword.org](http://www.homeword.org)





Date: August 23, 2019

Montana Board of Housing, Montana Housing Staff  
PO Box 200528  
Helena MT 59620-0528

RE: Public Comments on Draft 2021 QAP

Dear Montana Board of Housing and Montana Housing Staff:

Thank you for the opportunity to provide public comment on the current draft of the 2021 Montana Qualified Allocation Plan (QAP). We appreciated the working session in Fairmont as well. The following comments are in regard to the current draft of the 2021 QAP as provided.

Global:

1. The clarifications regarding what version of the QAP applies to the development phase vs the operations phase is helpful overall, and the reference to the definition of Applicable QAP is most critical. Thank you for adding this on the cover page and thank you for making the definition even more detailed.

Definitions:

2. **Page 3, clarification on the “Applicant” definition:** If the original Applicant adds a co-applicant for the application, does this additional language preclude that? We believe there is a larger question that should be considered: should the Applicant be required to be an entity that DOES have a long term or significant identity of interest with the project, such as the Developer or a General Partner or other Ownership Entity?
3. **Page 6, “Identity of Interest”:**
  - a. Part of the last sentence of the definition indicates a “passive non-profit entity”. What is meaning of “passive non-profit entity”? Should a definition be added? What is an appropriate role for such an entity? For the purposes of Montana property tax exemption, the statute states “the nonprofit general partner actively participates in accordance with the definition found in 26 U.S.C. 469(i). Section 26 U.S.C. 469(i) is applicable without reference to section 26 U.S.C. 469(i)(6).” It appears this requirement would not allow a “passive” non-profit entity to be involved in the project solely for the purposes of tax exemption, so the phrase “participating as a passive non-profit entity for purposes of obtaining a tax exemption” should be stricken from the definition.
  - b. Item (ii) states “is the General Partner of an entity formed for purposes of the In-Process Project”. Partnerships frequently have more than one General Partner. To be clear, this item should state what is intended: “is the sole General Partner or is the Managing General Partner”.

- c. It appears that the intent is that to qualify as having an “Identity of Interest,” and entity must satisfy both items (i) and (ii) or both items (i) and (iii). The conjunctives used do not support this intent. The first part should read “for the Applicant Project has a twenty-five percent (25%) or greater interest in the ownership or developer fee payable for the In-Process Project; and is either (i) the sole or Managing General Partner of an entity formed for purposes of the In-Process Project; or (ii) a Housing Credit Consultant for the development or construction phase of the In-Process Project and is entitled to receive a portion of the Developer Fee”. If the wording is not changed to reflect this intent, it would mean that a GP or Consultant earning as little as 1% of the Developer Fee would be considered as having an identity of interest, and that does not appear to be the intent given the identification or 25% interest in what is shown in the draft as item (i).
4. **Page 6, “In-Process Project”**, – please consider adding a definition for In-Process Project given the inference in sections 3.A.1 & specific reference in 3.A.2.
5. **Page 9, “Substantial Change”, new second bullet regarding Developer Fee agreement or Consultant Fee agreement:** What is the intent of this addition? Is this to require notification of Montana Housing if there is a change in the total amount of Developer/Consultant Fee, or is it indicating the amount of deferred fee? The deferred fee will always change during construction until completion, so we are assuming notification of change in total developer/consultant fee is the intent. If that is the intent, it would be better to just say that in the bulleted item, and not reference an agreement. They are not typically called Developer Fee agreement or Consultant Fee agreement, and the Developer Fee is often defined in the Limited Partnership Agreement, not a separate document. Assuming we understand the intent, it would be clearer if the bullet read “A change or amendment to the total Developer Fee or total Consultant Fee”.

Sections:

6. **Page 10-11, Section 3, A, 2. Applicant Cannot Exceed Cumulative Credit Maximum:**
  - a. Under definition of “Identity of Interest”, the In-Process projects are defined as the Identity of Interest counts only at 25% or greater participation. Therefore, this section does not count any participation below 25% in the Cumulative Credit Maximum. Is this correct?
  - b. We believe the Cumulative Credit Maximum amount should be raised to \$20 million, not \$15 million. If the cumulative is counting credit totals on projects through 8609s, there may be projects in several phases of development, but progressing on schedule. The limit should accommodate a multiyear delivery of projects from developers. Ultimately, allocations should be based on the merits of the projects, not focusing on penalizing developers or owners who have enough capacity to do more than one project at a time successfully. Raising the limit to \$20 million will support that intent.
7. **Page 11, Section 3, C. Projects Seeking Property Tax Exemptions:** We understand the concern regarding the revised statute and the potential for change in the legislative position on this topic. However, we feel that a 4% Bond project should not be held to the 50% at 50% rule, while we have this option available in Montana. Cost of development is at an all-time high and the ability for a project to qualify for property tax exemption and 60% rents allows for the necessary debt to make more 4% projects feasible. This will increase the number of homes Montanans can afford by relieving pressure on the 9% Housing Tax Credits, creating more opportunities to develop additional 4% projects in more of the larger Montana communities and allow for more scattered site 4%

preservation projects in smaller communities; the QAP should be facilitating this growth, not adding additional barriers to creating more homes people can afford. At this time, there are very limited resources in this state to expand the production of homes people can afford. Allowing 4% projects to follow the State statute would help with geographical distribution and higher production of homes annually. Households making 60% Area Median Income are struggling statewide. The 9% round is better utilized to continue to address the lower income targets.

If there is a fear that the change in the statute will have unintended negative consequences for very low-income households, 4% preservation projects with rental assistance will naturally continue to meet the needs of these residents as required by their rental assistance contracts. For other projects, doesn't it make more sense to wait and see if the change in statute does actually have any negative consequences before adding more barriers to the productions of homes people can afford in Montana? Homeword expressed concern in previous discussions about the revised statute and unintended consequences however we recommend no further limitations at this time. Instead, we'd suggest the Developer/Sponsor community, the Montana Board of Housing and entities like the Montana Housing Coalition discuss alternative approaches like developing a formula for Payment in Lieu of Taxes in order to find a reasonable balance.

8. **Page 12, Section 3, F, 1. Development Cost Limitation:** Why is Costs Per Unit Limit Exceptions only limited to Preservation projects? If this is subject to review by staff, is there not a reasonable process for any additional potential projects to request if there is a unique circumstance? We would request staff have the authority to review any type of request of this nature.
9. **Page 15, Section 3, G, 5:** We strongly disagree with the language added to this section. These changes will have unintended consequences to the long-term sustainable operations of each project and an owned portfolio of affordable properties.
  - a. Limiting of rents to 5% annually even if AMI increases is too restrictive. We are required to pay market rate expenses with limited rents; this is neither simple nor easy, especially on smaller projects in rural communities. We work to ensure compliance and keep the physical property needs covered with planned and unforeseen maintenance and repairs. We, as an organization, also need to earn revenue from operations to cover the salaries of experienced staff that ensure the long-term compliance of the tax credit program and other funding requirements and the successful financial management of our overall portfolio.
  - b. Annually monitoring of DCR or ER is also too restrictive and would create intense additional burdens for Montana Housing staff. We have projects in our portfolio that vary on their financial performance, for very different reasons. We need the flexibility to be able to loan money back for certain unexpected issues – say a \$30,000 boiler at Orchard Gardens. Small projects like Phillips St are almost impossible to cashflow on their own. Once we pay off a mortgage, our DCR may spike, but we should not be penalized for good asset management and it also allows us to refinance if needed to pay for capital improvements instead of coming back in at year 15 to re-syndicate, putting additional pressure on an already over-burdened LIHTC resource. These limitations will cause unintended consequences for the financial health of potentially individual projects, our housing and our organization. This would have detrimental effects on the existing and future stock of homes affordable to Montanans.

**10. Page 30, Section 8, E, 18, more added language regarding the 50% at 50% for tax exemption:**

Again, why would the QAP limit better utilization of the 4% program and the creation of additional new affordable homes? The statute is newly changed; let's see what effect, if any, there is from the statute change before placing more barriers to creating homes people can afford in Montana (see Item 6 above).

**11. Page 47, Section 10, B, Declaration of Restrictive Covenants for Carryover:** The added requirement of the ALTA being required at the time we request the Carryover commitment when we submit the Declaration of Restrictive Covenants (D of RC) has significant increased cost impacts because of the proposed timing. As part of our due diligence and prior to the partnership closing, we are required by the investor to have an ALTA with the title commitments reflected. The timing of such would not show the recorded D of RC as it is generally recorded simultaneously when the property is purchased by the partnership as part of the closing. Typically, an updated Title Report and/or ALTA are completed when the project is complete. Submitting an ALTA and /or Title report showing the correct positioning of the D of RC should be a requirement of the submittal for the request of the 8609 issuance. At a time when everyone is experiencing increased costs of development, why add unnecessary additional costs to the project? A final ALTA and updated Title report will already need to be procured for the Investor at completion; it makes much more sense to require these to be submitted to Montana Housing with the 8609 request.

We sincerely hope that you will consider our comments and address our concerns in the final version of the QAP. We are available at your convenience should you have any questions. We have discussed these concerns with our colleagues and find that most of these concerns are universal to our industry colleagues.

Sincerely,



Andrea Davis  
Executive Director



Heather McMilin  
Housing Development Director



Matt Joseph  
Finance Director

**From:** [Shyla Patera](#)  
**To:** [Guariglia, Kellie](#); [Bair, Mary](#)  
**Subject:** QAP 2021 comments  
**Date:** Wednesday, August 21, 2019 10:46:25 AM  
**Importance:** High

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I, Shyla Patera, an Independent Living Specialist with North Central Independent Living Services, Inc., submit the following comments in regard to the Draft 2021 Qualified Allocation Plan. First, North Central Independent Living Services, Inc. supports accessibility and universal design throughout the building process. Universal design, accessibility, and visit ability are the hallmarks of aging in place and community living. Building strong neighborhoods and communities is paramount. New home and apartment construction should include, not only the built living environment, but the pathways and access ways to enter homes. We are incredibly thankful that Visit ability and universal design principles in the Qualified Allocation Plan. We also hope that developers will consider the needs of those Montanans who have visual disabilities, are deaf or hard of hearing or have sensory disabilities. We also thank MBOH and Montana Housing for including disability parking access both for people with disabilities and their Personal Care Attendants or caregivers. Even though developers can no longer utilize MBOH tax credits to fund leisure environments, developers should follow access standards for swimming pools, play areas, as well as exercise areas. For help with this, we urge you to contact your local independent living center.

Montana's developers must also find ways to increase accessible, visit able housing stock. North Central Independent Living Services, Inc., is pleased to see a section on income targeting for low income individuals, project based buildings and rural set asides for development. However, we hope that developers will work to build truly inclusive communities and neighborhoods. When HUD multifamily rental complex leases end, Montana developers should be awarded for keeping income targets in place as well as for modernizing housing stock and adopting policies that would assist extremely low income and other Montanans with disabilities to access multifamily programs. Mixed use housing developments are often problematic for those with mobility disabilities and we encourage funding for more single use construction. NCILS encourages more discussion outreach to and studies regarding accessibility in condos, townhouses and such.

NCILS hopes that the Department of Commerce, DPHHS, and Montana Housing will actively work to apply for and funds through the Mainstream Housing Voucher program to increase access to housing vouchers. NCILS hopes that builders and communities will be able access programs similar to, but not limited to the small competitive ADA programs as well as Housing Trust Fund funding in order to make access and home modifications for some home owners. NCILS applauds the efforts by the Housing Division and the Department of Commerce to highlight connectivity in QAP / multifamily applications. We encourage the Department of Commerce, DPHHS, and the Montana Department of Transportation to work with local communities to enhance policies that encourage accessibility in sidewalk

construction, pathway access, as well as access to transportation in all forms.  
Thank you for the opportunity to comment on the Draft 2021 QAP .

Shyla Patera  
IL Specialist  
North Central Independent Living Services  
1120 25th Avenue North East  
Black Eagle,

**From:** [Karen Burkett](#)  
**To:** [Guariglia, Kellie](#)  
**Subject:** RE: QAP Session  
**Date:** Wednesday, May 29, 2019 10:39:19 AM

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Kellie:

Stream of conscious typing..... I am most concerned about the 58% rule when utilizing the IA. If the property is at 60% why is there a penalty applied when exercising the right to IA? It makes little to no sense to me at all. When assigning the % to a unit at the beginning the property is assigned based upon the 58% rule which required 2—50% units for every 70%. The problem with this is that it is not in line with the program which is 60%. Because of this 58% and the need to assign 2—50% instead of one 50% for every 70% makes the possibility to be out of compliance greater than it would be if it were one for one. The ability to rent to those that are over 60% is so beneficial. When filling Larkspur we had to turn away several people because of a few hundred dollars. This program is designed to help low income people and to think that 60-70% is not low income is inaccurate. Additionally, to accommodate a 70% due to the 58% rule an additionally 50-60% renter is being turned away.

Now for the important bullet points.

- The 58% mandate is creating an unintentional penalty on a potential 60% renter by requiring an owner to assign two 50% units in order to allow a 70% tenant. This is going to create the turning away of a great 60% candidate which is unfortunate.
- The assignment of two 50% for one 70% can create an opportunity to become non-compliant.
- The 58% is lower than what the property set aside is!!!
- What is the impetus in the decision to set the percentage at 58%. If the concern is the owner does not deserve to make more money, I disagree. No developer is going to build if they are not going to be able to make some money.

Karen D. Burkett, CPM  
President  
Real Estate Management Specialists, Inc.  
282 4th Avenue WN  
Kalispell, MT 59901  
406-755-0961, extension 6 (Office)  
406-250-0198 (Cell)  
karen@remsmt.com

The Management Company Setting the Standard

-----Original Message-----

From: Guariglia, Kellie <kguariglia@mt.gov>  
Sent: Tuesday, May 28, 2019 10:12 AM  
To: Karen Burkett <karen@remsmt.com>  
Subject: RE: QAP Session

Ok sorry to hear that but please send us any comments you have.

Thank you,

KELLIE GUARIGLIA

T: 406.841.2838

-----Original Message-----

From: Karen Burkett <karen@remsmt.com>  
Sent: Tuesday, May 28, 2019 10:09 AM  
To: Guariglia, Kellie <kguariglia@mt.gov>  
Subject: QAP Session

Kellie

I knocked my tooth out (front) and need to stay and get the smile fixed. I look like a homeless person. LOL Sorry I will miss the session. I realize at this late date I will not be able to get a refund.

Karen

Karen D. Burkett, CPM  
President  
Real Estate Management Specialists, Inc.  
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Kalispell, MT 59901  
406-755-0961, extension 6 (Office)  
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karen@remsmt.com

The Management Company Setting the Standard



**From:** [Maxwell, Cindy](#) on behalf of [DOC Housing \(Webmail\)](#)  
**To:** [Bair, Mary](#); [Guariglia, Kellie](#)  
**Subject:** FW: Public comment 2021 QAP  
**Date:** Monday, August 26, 2019 7:08:53 AM

---

Cindy Maxwell  
Administrative Assistant

## MONTANA HOUSING

DEPARTMENT OF COMMERCE  
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[HOUSING.MT.GOV](http://HOUSING.MT.GOV)

---

**From:** Lori Davidson <[ldavidson@missoulahousing.org](mailto:ldavidson@missoulahousing.org)>  
**Sent:** Friday, August 23, 2019 2:43 PM  
**To:** DOC Housing (Webmail) <[Housing@mt.gov](mailto:Housing@mt.gov)>  
**Subject:** Public comment 2021 QAP

Dear Board of Housing,

Thank you for the opportunity to comment on the draft 2021 Montana Qualified Allocation Plan (QAP.) I'm sorry we missed the public hearing on August 22 – the notice of the date slipped by us - so we are submitting our comments in writing. Please see our comments below:

1. Page 11, Section 3 C. Projects Seeking Property Tax Exemptions: While we understand why this is proposed, we disagree with imposing additional restrictions over those required under State statute. A tax exemption is a huge factor in being able to make 4% projects work in Montana. We have struggled for years to be able to put together a feasible 4% application so that the affordable housing crisis in Missoula could be addressed in a meaningful way, without taxing the 9% program. The change in State statute is a gift. We are now involved in two 4% applications which will “move the needle” toward this goal of creating homes people can afford. The tax exemption increases the amount of debt a 4% project can carry, potentially by millions, and goes a long way toward filling the inevitable and sometimes insurmountable financing gap. We do understand that exemption may need to be addressed in the future, and are willing to work on developing more state resources or coming up with some other method that could alleviate concerns with legislators over tax exemption. But please don't remove this from our toolbox while it is in the law.
2. Page 14, Section 3 G 3. Debt Coverage Ratio. We understand that the DCR should be within the benchmarks set in the QAP during the first year to ensure that credits awarded are no greater than necessary to make the project feasible. But the operational circumstances over time can vary greatly and a healthy DCR is essential to ensure the longevity of the development. Unforeseen things happen and having additional cash flow to ensure the

property will not be endangered is critical. For example, if an additional loan is needed to cover a catastrophic event, additional cash flow is essential. Having cash flow for long-term maintenance needs can keep properties in good enough condition that resyndication at year 15 might not be needed. The waterfall often includes general partner management fees or other fees which are only payable if there is enough cash flow. Cash flow is needed to pay off deferred developer fees. A well-managed, well-developed project should have healthy cash flow. Why would you limit this cushion of flexibility?

3. Page 15, Section 3 G 5. Maximum Rents. Maximum rents as set by the LIHTC program should be the controlling factor here. It is unlikely that we, as property managers, would try and raise rents for existing tenants more than 5% in a calendar year as occupancy could suffer. However, it would be extremely beneficial to the property to be able to lease new tenants at a higher rate. Consider a scenario where a property has failed to raise rents for a number of years, the rents are well below maximum rent allowed, and operations are suffering. A new property manager or owner takes over and out of necessity must increase rents. Rents for existing tenants are phased in, but new tenants lease at the new higher rent rates. This is a real-life scenario for us. Without the ability to lift the new tenant rents, the property's DCR and operations would have suffered. Please consider removing the 5% rent limitation.

Thank you again for this opportunity to comment.

Lori Davidson | Executive Director  
Missoula Housing Authority  
406-549-4113 ext. 105  
[ldavidson@missoulahousing.org](mailto:ldavidson@missoulahousing.org)

**From:** [Maxwell, Cindy](#) on behalf of [DOC Housing \(Webmail\)](#)  
**To:** [Bair, Mary](#); [Guariglia, Kellie](#)  
**Subject:** FW: PUBLIC COMMENT FOR 2021 QAP  
**Date:** Friday, August 23, 2019 7:30:00 AM

---

Cindy Maxwell  
Administrative Assistant

## MONTANA HOUSING

DEPARTMENT OF COMMERCE  
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---

**From:** Don St. Peter <[don@stplawoffices.com](mailto:don@stplawoffices.com)>  
**Sent:** Thursday, August 22, 2019 3:41 PM  
**To:** DOC Housing (Webmail) <[Housing@mt.gov](mailto:Housing@mt.gov)>  
**Cc:** Jason Harby <[Jason@stplawoffices.com](mailto:Jason@stplawoffices.com)>; [dbjornson@bjornsonlaw.com](mailto:dbjornson@bjornsonlaw.com)  
**Subject:** PUBLIC COMMENT FOR 2021 QAP

Forward this email to Mary Bair and Kellie Guariglia

Mary and Kellie:

I have reviewed the draft QAP for 2021 and have some concerns about Section 3.C.

As you know the 2019 Legislature approved a revision of MCA 15-6-221 which removed from the statute the following language:

“(d) the property meets a public purpose in providing housing to an underserved population and provides a minimum of 50% of the units in the property to tenants at 50% of the median family income for the area, with rents restricted to a maximum of 30% of 50% of median family income, as calculated under [26 U.S.C. 42](#);”

Section 3.C. of the QAP appears to be an attempt to incorporate a requirement for real property tax exemption under the statute which was removed by the legislature. It effectively adds a requirement to obtaining real property tax exemption for low income housing projects which is not part of the statute effective October 1, 2019. I question the Board's authority to effectively amend the statute as adopted by the legislature. I can provide a detailed legal analysis regarding this issue, but at this point I only want to raise this issue for your consideration.

If MBOH has this authority, then taken to its logical conclusion MBOH through this mechanism could effectively exclude any project from receiving a tax credit allocation which applied for exemption under this statute. Thereby eliminating a tax benefit

provided by the legislature.

From an administrative viewpoint, this addition to the QAP effectively shifts authority over the determination of what property qualifies for the property tax exemption from the Montana Department of Revenue to MBOH. Again, I question the authority of MBOH to usurp the authority allocated by the legislature to the Montana Department of Revenue.

From a practical viewpoint, I question whether MBOH has looked at the numbers and the impact of this requirement in smaller communities that could still support a new construction 4% project like Kalispell, Great Falls and Butte? My experience is that this requirement will make it more difficult for 4% projects to qualify. That runs counter to my understanding of the purpose of the LIHTC program and MBOH's administration of LIHTC's to facilitate the development of low income housing. Instead of facilitating such projects this requirement makes it harder to qualify some projects especially smaller projects in rural communities.

I believe that the limitation of income average targeting to a 58% average effectively protects sufficient households earning less than 50%. Given that income averaging target of 58%, the requirement of Section 3.C. is redundant.

Thank you for your consideration.



310 W. 19th Terrace  
Kansas City, MO 64108

May 29, 2019

Mary Bair  
Montana Board of Housing  
301 S Park Ave  
Helena, MT 59601

RE: Comments to the Montana Board of Housing Draft QAP for 2021 QAP Session.

Dear Mary:

Travois welcomes the opportunity to submit comments during the MBOH 2021 QAP session.

**Development Cost Limitations –Total Cost Per Unit**

We recognize and understand MBOH's comment in the draft 2021 QAP about ensuring that the limited credits MBOH has are used most efficiently.

However, we urge that the rigidness of a pure total cost per unit calculation is inefficient and unfairly impacts large, rural, new construction projects in a negative way. We continue to strongly urge MBOH to replace the Total Project Cost per Unit cap with a cost per square foot *eligible basis* cap as a means to control costs and ensure an efficient use of credit. An eligible basis cap would serve to better control the use of credits on all projects, not only the large new construction projects.

Setting a \$240,000 per unit threshold on total project costs benefits new construction projects with smaller square footages and smaller bedroom types (1BR/2BR unit projects) and will prevent projects where the market demands larger proposed bedroom types (3BR/4BR+) from even being able to receive Housing Credits. Larger, new construction housing is in high demand among tribal households and projects dedicated to meeting the extreme shortage of housing on tribal lands are at an unfair disadvantage under MBOH's current cost caps. The current caps greatly favor multifamily new construction and rehabilitation projects, but greatly hurt rural single-family new construction.

The most equitable measure for MBOH to implement would be to control credits by limiting *eligible basis* for Hard Costs based on regional standards and data, for example at no more than \$155 per square foot. A cost per square foot metric provides a more accurate way to compare costs across projects with different unit types and sizes to determine which projects would truly have excessive costs. Additionally, a basis cap (as opposed to a strict cost cap) still allows MBOH to efficiently allocate its tax credits in the most feasible manner, while at the same time recognizing that some projects may end up more costly than anticipated and that the developer would then cover those excess costs on their own.

Nonetheless, should MBOH continue to use a flat Total Project Cost Per Unit calculation, we ask that the figure be tied to inflation and increase every year as construction costs continue to increase year over year.

**p. 21 – MBOH Discretionary Basis Boost**

We oppose the removal of the discretionary basis boost justification for communities with higher than normal labor and material costs, etc. We have seen many times where unusual QCT boundaries prevent low income, rural communities from qualifying as a QCT/DDA even though the community suffers from extremely high material and labor costs. Many, if not all, tribal low-income communities fall into this category and would suffer greatly from the inability to earn the basis boost. Because this basis boost is wholly discretionary, MBOH can continue to grant/deny as they see fit. We sincerely request that this language remain.

**p. 29 – Letter of Intent; Market Study**

We reject the inclusion of new language that would not allow full market studies to be submitted with the letter of intent. One of the reasons the LOI process was implemented was to reduce some of the upfront costs to developers along the application process. The proposed language now requires two forms of a market study to be procured for a full application and only serves to increase the overall cost of the project. Developers should still have the option of submitting a mini or a full market study at LOI. Throughout the 2021 draft QAP, MBOH is looking to make Housing Credits more efficient and to reduce cost, yet, are now subjecting developers to two market study costs unnecessarily.

**p. 41 – Award Determination Selection Standard**

We strongly recommend that the MBOH abandon the clause in the QAP that allows the Board to disregard the scores achieved by the applicants in the process of awarding of credits and strictly adhere to the criteria established in the QAP. We understand that applicant scores have historically been incredibly close, and in many cases a large percentage of applicants have achieved the same score. As the QAP is currently written, there is no incentive for developers to significantly target lower incomes, provide more services, or set aside additional units if the scoring is merely a threshold. We urge MBOH to insert additional language that would provide greater weight to each project's score in the Board's ultimate determination rather than leaving the selection of awards to the ultimate discretion of the board members.

Thank you for considering our comments. Please feel free to contact us with any questions. We look forward to continuing our collaboration with MBOH.

Sincerely,

Trent Rogers  
Project Coordinator

# MONTANA BOARD OF HOUSING

## HOUSING CREDIT PROGRAM

### 2020-2021 QUALIFIED ALLOCATION PLAN (QAP)

#### NOTICE REGARDING APPLICABLE VERSION OF QAP

This 2021 QAP will govern the Montana Board of Housing's award of the Housing Credits allocated to the Montana Board of Housing by the federal government for 2021. The process for award of 2021 Housing Credits begins with the deadline for submission of Letters of Intent on the second Monday in April 2020. The award of 2021 Housing Credits to Applicants will be made at the Board's meeting in late October 2020. (See Application Submission & Award Schedule in Section 4.B of this 2021 QAP)

This 2021 QAP may not apply to certain other processes, procedures and fees, for which the Applicable QAP may be the QAP for an earlier or later year. (See "Applicable QAP" in Section 1 of this 2021 QAP)  
Please contact MBOH staff with questions regarding the Applicable QAP.

**MONTANA BOARD OF HOUSING**  
**PO BOX 200528**  
**HELENA, MONTANA 59620-0528**  
**(406) 841-2840**  
**(406) 841-2841 FAX**

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## INTRODUCTION

The Low Income Housing Tax Credit is established under Section 42 of the Internal Revenue Code of 1986 ("Section 42"). The credit is a federal income tax credit for Owners of qualifying rental housing which meets certain low income occupancy and rent limitation requirements.

Congress established the Low Income Housing Tax Credit program by enactment of the Tax Reform Act of 1986. Montana Board of Housing (MBOH) implemented and began administering the Low Income Housing Tax Credit program in 1987 in the State of Montana. Since then, the program has assisted in providing for the retention, rehabilitation, and construction of rental housing for low income individuals and families for over 6,000 units throughout Montana.

The Omnibus Budget Reconciliation Act of 1989 required the appropriate administering agencies (in this case, MBOH) to allocate credits pursuant to a Qualified Allocation Plan (QAP) which sets forth the priorities, considerations, criteria and process for making Allocations to Projects in Montana. The Omnibus Budget Reconciliation Act of 1993 provided a permanent extension for the Low Income Housing Tax Credit.

MBOH is the state agency that allocates the tax credits for housing located in Montana. The per state resident amount of tax credit allocated annually for housing is limited to the amount specified by the IRS and adjusted from time to time as provided in notice from the IRS. The current allocation of Tax Credits plus any inflation factor the IRS may calculate is posted to the MBOH website, normally in August or September each year. Montana receives the minimum cap because of its population.

An Owner must obtain a Final Allocation from MBOH and meet all other applicable requirements before claiming the tax credit.

This QAP is intended to ensure the selection of those developments which best meet the most pressing affordable housing needs of low income people within the State of Montana in accordance with the guidelines and requirements established by the federal government and the requirements, considerations, factors, limitations, criteria and priorities established by the MBOH Board.

At its August ~~87, 2018, 2018~~2019 meeting, the MBOH Board considered and approved public notice and distribution of the proposed ~~2020-2021~~ QAP. Public notice of the proposed ~~2020-2021~~ QAP and the opportunity for public comment was published and distributed on ~~August 8, 2018~~ \_\_\_\_\_, 2019 with a public hearing on ~~August 23, 2018~~ \_\_\_\_\_, 2019. At its ~~September 11, 2018, 2018~~ \_\_\_\_\_, 2019 meeting, after considering written and oral public comment on the proposed ~~2020-2021~~ QAP, the MBOH Board approved the proposed ~~2020-2021~~ QAP for submission to and approval by the Montana Governor. The Governor of Montana, Steve Bullock, approved the plan as the final ~~2020-2021~~ QAP on \_\_\_\_\_, ~~2018~~2019.

MBOH annually makes available for Reservation and Allocation its authorized volume cap of credit authority subject to the provisions of this QAP. Montana's QAP for the current and prior years, along with current Forms, are available at <http://housing.mt.gov/MFOAP>. MBOH evaluates tax credit Applications, selects the Projects for which tax credits will be reserved, and allocates credits to the selected developments meeting applicable requirements. Federal legislation requires that the administering agency allocate only the amount of credit it determines necessary to the financial feasibility of the development.

Tax credits not Awarded during a given round or any unused credits from earlier rounds may, at the discretion of MBOH: be carried forward for the next round of allocation; as

MBOH determines necessary for financial feasibility, be used to increase the amount of tax credits Awarded for a Project selected for an Award of tax credits in a prior round; or be otherwise committed, Awarded or Allocated as provided in this QAP.

Consistent with the foregoing and notwithstanding any other provision of this QAP, all tax credit Awards, Reservation (Initial Allocations), Carryover Commitments, 10% Cost Certifications and Final Allocations are subject to and conditional upon IRS authorization and allocation of tax credits for the State of Montana.

## SECTION 1 - DEFINITIONS

As used in this QAP, the following definitions apply unless the context clearly requires a different meaning:

"4% Credits" means HCs that may be Awarded in accordance with the applicable QAP to Projects with tax-exempt financing under the volume limitation on private activity bonds and, except as otherwise provided by this QAP for Applications combining 4% and 9% Credits, outside the competitive allocation process applicable to 9% Credits.

"9% Credits" means HCs that may be Awarded through the competitive process in accordance with the Applicable QAP.

"10% Cost Certification" means an independent third-party CPA audit report, including a statement of eligible and qualified basis for the Project, submitted to MBOH on the Form specified by and in accordance with the requirements of this QAP.

"Absorption Rate" means the number of months projected in the Application's market study for a Project to become fully leased, using the calculations listed in the full market study guidelines posted on the MBOH website.

"Acquisition" means obtaining title, lease or other Land and Property Control over a property for purposes of an HC Project. Acquisition includes purchase, lease, donation or other means of obtaining Land or Property Control.

"Acquisition/Rehab" means Acquisition of a property with one or more existing buildings and renovation meeting Montana's minimum Rehabilitation standard set forth in Section 3, Substantial Rehabilitation, for existing buildings on the property that are part of an HC Project.

"Allocation" means an Initial Allocation or a Final Allocation.

"Applicable QAP" means:

(a) The QAP for the Housing Credit year for which the Application is or was submitted, evaluated and Awarded HCs:

(i) for purposes of any substantive issues relating to:

(A) an Award;

(B) the Development Evaluation Criteria;

(C) Scoring;

(D) Selection Criteria; and

(E) Selection Standard for such Award; and

(ii) for purposes of the fee amounts charged for:

(A) Letter of Intent;

(B) Application;

(C) Reservation (Initial Allocation);

(D) Carryover Commitment;

(E) 10% Cost Certification; and

(F) Final Allocation, the particular year's QAP under which the Application is or was submitted, evaluated and Awarded HCs;

(b) The most recently adopted QAP:  
(i) for purposes of:  
(A) Project changes;  
(B) Reservation (Initial Allocation) (other than the fee amount);  
(C) Declaration of Restrictive Covenants;  
(D) Carryover Commitment (other than the fee amount);  
(E) 10% Cost Certification (other than the fee amount);  
(F) Final Allocation (other than the fee amount);  
(G) Compliance requirements and compliance audits; and  
(H) any post-Award procedures, the QAP most recently adopted; and  
(I) Fees and fee amounts for post-Credit Refresh Project changes, Reservation, Declaration of Restrictive Covenants, Carryover Commitment, 10% Cost Certification and Final Allocation.

(c) The QAP most recently adopted as of the date of submission of a Credit Refresh application:

(i) for purposes of:  
(A) a Credit Refresh application;  
(B) consideration and determination regarding a Credit Request application;  
(C) payment of MBOH legal fees relating to or required as a result of a Credit Refresh application or Credit Refresh; and  
(D) post-Credit Refresh Project changes, Reservation, Declaration of Restrictive Covenants, Carryover Commitment, 10% Cost Certification and Final Allocation (not including fees and fee amounts for the foregoing specified such post-award items), the QAP most recently adopted as of the date of submission of the Credit Refresh application; or -

(d) for Projects that have received a Credit Refresh and for purposes of fees and fee amounts for post-award items (post-Credit Refresh Project changes, Reservation, Declaration of Restrictive Covenants, Carryover Commitment, 10% Cost Certification and Final Allocation), compliance requirements, compliance audits, and any other post-Award procedures, the QAP most recently adopted.

“Applicant” means the entity identified as such in the Application, and who is and will remain responsible to MBOH for the Application. When used in reference to a Letter of Intent, the term means the person or entity on whose behalf the Letter of Intent is submitted and who is and will remain responsible to MBOH for the Letter of Intent. The Applicant must remain the same from Letter of Intent through the Compliance Period, except as provided in Section A.3.

“Application” means a request for an Award of HCs submitted in the Form specified by and according to the requirements of this QAP.

“Architect” means a professional licensed by the state of Montana as a building architect pursuant to Mont. Code Ann. Title 37, Chapter 65.

“Available Annual Credit Allocation” is defined as the credit ceiling allocated to MBOH by the federal government for the previous calendar year and includes the state’s actual or estimated credit ceiling for the current year plus any other available credits from prior year credit authority determined as of 20 business days prior to the applicable Application deadline, and includes any credits held back pursuant to court order or subject to Award under the Corrective Award set aside.

“Award” means selection of a Project by the MBOH Board to receive a Reservation of HCs.

“Award Determination Meeting” means the meeting of the MBOH Board at which the Board selects one or more Applicants to receive an Award.

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"Builder's Overhead" means the builder's overhead shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

"Builder Profit" means the builder's profit shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

"Carryover" means the process and determination of MBOH by which Awarded and reserved HCs are continued and carried over to the end of the second calendar year after the year of the credit award. Carryover is made by MBOH issuance of a Carryover Commitment, according to the specific requirements of this QAP.

"Carryover Commitment" means a Carryover of HCs based upon an MBOH Carryover determination, which commitment is conditional upon the Applicant performing all conditions and requirements for Final Allocation as set forth in the Applicable QAP, the Carryover Commitment document issued by MBOH and applicable law.

"Cold Weather Development and Construction" means experience of the HC Developer or Consultant on one or more Projects located above the 40 degrees north parallel.

"Commercial Purposes" means use of any Project Amenities, common space or other Project property or facilities by others than tenants for which the Project owner or management receives any compensation for such use, whether in cash or in kind.

"Common Area" means any space in the building(s) on the Project property that is not in the units (except manager units), i.e. hallways, stairways, community rooms, laundry rooms, garages/carpools, manager units, etc. Common Area is eligible to be paid for with Housing Credits.

"Compliance Period" means, with respect to any building, the initial period of 15 taxable years beginning with the 1st taxable year of the applicable credit period as provided in 26 U.S.C. § 42.

"Construction Costs" means all costs listed on the UniApp, Section C, Uses of Funds, under the Site Work and Construction and Rehab sections.

"Consultant" or "HC Consultant" means an individual or entity advising a Developer or Owner with respect to the HC Application and/or development process.

~~"Contractor's Overhead" means the contractor's overhead shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.~~

~~"Contractor Profit" means the contractor's profit shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.~~

"Credit Refresh" means a conversion of previously awarded Credits, from the original ~~Credited~~ year of the Credits Awarded (i.e., the year of the Available Annual Credit Allocation from which the Credits were awarded) to a more recent Credit year, pursuant to a Board-approved return of the Credits and immediate re-Reservation of the Credits as a more recent year's Credits, as approved by the MBOH Board in accordance with the requirements of the Applicable QAP.

"Debt Coverage Ratio" or "DCR" means the ratio of a Project's net operating income (rental income less Operating Expenses and reserve payments) to foreclosable, currently amortizing debt service obligations.

"Design Professional" means a housing/building design professional.

"Developer" means the individual(s) and/or entity(ies) specifically listed and identified as the developer in the Uniform Application, Section A - Applicant Developer/Sponsor, responsible for development, construction and completion of an HC

Project.

“Developer Fee” means those costs included by the Applicant in the UniApp, adjusted as necessary to comply with the maximum Developer’s fee specified in Section 3, Additional Cost Limitations, Developer Fees, which are included as Developer’s fees by the Cost Analysis.

“Development Evaluation Criteria” means the evaluation and scoring criteria set forth in QAP Section 9, Evaluation and Award.

“Development Team” means and includes the Applicant, Owner, Developer, General Partner, Qualified Management Company, and HC Consultant identified as such in the Application.

“Difficult Development Areas” or “DDA” means an area designated by HUD as a Difficult Development Area.

“Disqualify” or “Disqualification” means, with respect to an Application, that the Application is returned to the Applicant by MBOH without scoring and without consideration for an Award of HCs, as authorized or required by this QAP.

“Elderly Property” means a Project for which a Fair Housing Act exemption for housing for older persons will apply, i.e., for households that include at least one individual age 55 or older or in which all household members are age 62 or older, as more specifically defined in the Fair Housing Act definition of “housing for older persons” as codified at 42 U.S.C. § 3607(b)(2)(B), (C) and (C)(i). If permitted by the rules applicable to other federal funding sources involved in the Project, households may also include disabled individuals below the specified age thresholds.

“Expense Coverage Ratio” means, with respect to a Project with no hard debt included in the UniApp, the ratio of the Project’s operating income to expenses.

“Experienced Developer” means a Developer who was entitled by written agreement to receive at least 50% of the ~~Development-Developer~~ Fees on a prior low-income housing tax credit Project that has achieved 100% qualified occupancy and for which the applicable state housing finance agency has conducted a compliance audit which revealed no significant problems.

“Experienced Partner” means a member of the Development Team who was a member of the Development Team on a prior low-income housing tax credit Project that has achieved 100% qualified occupancy and for which the applicable state housing finance agency has conducted a compliance audit which revealed no significant problems.

“Extended Use Period” means the Compliance Period plus an additional period of at least 15 years, or a longer period, as specified in the Application and the Restrictive Covenants.

“Fee Schedule” means the most current version of the Fee Schedule Form referenced in this QAP. The Fee Schedule is available on the MBOH website.

“Final Allocation” means, with respect to HCs, MBOH issuance of an IRS Form 8609(s) (Low Income Housing Credit Allocation Certificate) for a Project after building construction or Rehabilitation has been completed according to the Project Application and any MBOH or MBOH Board-approved changes and the building has been Placed in Service.

“Final Cost Certification” means an independent third-party CPA audit report, including a statement of eligible and qualified basis for the Project, submitted to MBOH on the form specified by and in accordance with the requirements of this QAP, for purposes of obtaining IRS Form 8609(s).

“Form” means the most current version of any MBOH Form referenced in this QAP. All Forms are available on the MBOH website.



“General Partner” means the general partner of a partnership entity that is formed for purposes of a Project.

“General Requirements” means the contractor’s miscellaneous administrative and procedural activities and expenses that do not fall into a major-function construction category and are Project-specific and therefore not part of the contractor’s general overhead, categorized in accordance with NCSHA standards and shown in the Applicant’s properly completed UniApp Supplement, Section C, Limitations and Requirements.

“Gut Rehab” means a Project that includes the replacement and/or improvement of all major systems of the building, including (a) removing walls/ceilings back to the studs/rafters and replacing them; (b) removing/replacing trim, windows, doors, exterior siding and roof; (c) replacing HVAC, plumbing and electrical systems; and (d) replacing and/or improving the building envelope (i.e., the air barrier and thermal barrier separating exterior from interior space) by either removing materials down to the studs or structural masonry on one side of the exterior walls and subsequently improving the building envelope to meet the whole-building energy performance levels for the project type, or creating a new thermal and air barrier around the building.

“Hard Costs” means and includes building Acquisition costs, Site Work costs and Construction and Rehab costs, as shown in the Applicant’s properly completed UniApp-Supplement, Sections C, Uses of Funds.

“Hard Cost Per Square Foot” means Hard Costs divided by Project Square Footage shown in the Applicant’s properly completed UniApp-Supplement, Section C, Cost Limitations and Requirements Fees Tab.

“Hard Cost Per Unit” means an amount calculated by dividing Hard Costs by the number of units in the Project, as calculated in the UniApp-Supplement, Section C, Cost Limitations and Requirements Fees Tab, Part XI I, line “Cost Per Unit.”

“Housing Credits” or “HCs” or “Credits” means federal low-income housing tax credits allocated or available for allocation under this Montana QAP.

“Identity of Interest” between an Applicant and an In-Process Project means that the Applicant or a member of the Development Team for the Applicant Project: (i) has ~~a~~ twenty five percent (25%) or greater an interest in the ownership or developer fee payable for the In-Process Project; (ii) is the sole General Partner or the Managing General Partner of an entity formed for purposes of the In-Process Project; or (iii) is a Housing Credit Consultant for the development or construction phase of the In-Process Project and is entitled to receive a portion of the Developer Fee. The Applicant does not have an Identity of Interest with an In-Process Project solely because a person or entity involved in or providing support for the Applicant Project is or was also involved in or providing support for the In-Process Project, e.g., participating as a ~~passive~~ non-profit entity for purposes of obtaining a tax exemption, or providing community or supportive services for the Project, so long as such person or entity is not entitled to a portion of the Developer Fee.

“Initial Allocation” means the conditional setting aside by MBOH of HCs from a particular year’s federal LIHTC allocation to the state for purposes of later Carryover Commitment and/or Final Allocation to a particular Project, as documented by and subject to the requirements and conditions set forth in a written Reservation Agreement, the Applicable QAP and federal law.

“Investor” means an entity that will directly or indirectly purchase HCs from the awardee.

“Land or Property Control” means legally binding documentation of title or right to possession and use of the property, or the right to acquire title or right to possession and use of the property, for purposes the Project, including but not limited to documentation of fee ownership, lease, buy/sell agreement, option to purchase or lease, or other right, title or

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interest that will allow the Owner to acquire Proof of Ownership for purposes of Carryover.

"Large Project" means, for purposes of the Soft Cost Ratio limitation in Section 3.0F, a Project with more than 24 ~~low income~~ Housing Credit units.

"Letter of Intent" or "LOI" means a letter and attachment submitted to MBOH on the MBOH Letter of Intent Form.

"Low-Income Housing Tax Credits" means federal low-income housing tax credits, referred to in this QAP as HCs.

"Management Company" means a person or entity that has contracted with the Owner to manage the Project property, including such activities as leasing units, enforcing lease requirements and rules, repairs and maintenance, Housing Credit compliance and other matters relating to the operation of the project.

"Nationally-Recognized LIHTC Compliance Training Company" means a company recognized in the Low Income Housing Tax Credit industry as a qualified Low Income Housing Tax Credit compliance trainer.

"NCSHA" means the National Council of State Housing Agencies.

"New Construction" means construction of one or more new buildings, and includes Gut Rehabs.

"Operating Expenses" means projected ongoing costs to run or operate a property, not including expenses for amortization, depreciation or mortgage-related interest.

"Owner" means the legal entity that owns the Project.

"Permanent Supportive Housing" means housing that combines and links permanent, affordable housing with flexible, voluntary support ~~wrap-around supportive services designed to help tenants for people previously~~ experiencing homelessness or with, as well as other people with disabilities or other special needs stay housed and build the necessary skills to live as independently as possible.

"Placed in Service" means: (a) for a new or existing building, the certification of the building or the date of certification of the building as being suitable for occupancy in accordance with state or local law through issuance of a certificate of occupancy; and (b) for rehabilitation expenditures that are treated as a separate new building, the close of the 24-month period, determined in compliance with Section 42, over which such expenditures are aggregated, or, if rehabilitation is completed and the minimum expenditures requirement of Code Section 42(e)(3)(A) is met in less than 24 months, the expenditures may be treated as placed in service at the close of such shorter period, determined in compliance with Section 42. This definition is subject to the applicable provisions of Section 42 and in the event of a conflict between this definition and Section 42, the provisions of Section 42 shall control.

"Preservation" means Projects that are for the Acquisition and Rehabilitation, or Rehabilitation, of existing affordable housing stock.

"Project" means the low income residential rental building, or buildings, that are the subject of a Letter of Intent or an Application for or an Award of HCs.

"Project Square Footage" means such portion of the total square feet applicable to low-income Units and Common Areas and used for the applicable square footage calculation in the UniApp under Section B - Program Information, Part X, "Project Uses." Project Square Footage includes all building square footage available to or serving tenants, including units, management unit(s) and offices, Common Area, balconies, patios, storage and parking structures.

"Proof of Ownership" means title or right to possession and use of the property for the duration of the Compliance Period and any Extended Use Period plus one year, e.g., a

recorded deed or an executed lease agreement.

“Qualified Allocation Plan” or “QAP” means this Montana qualified allocation plan required by Section 42 of the Code.

“Qualified Census Tract” or “QCT” means an area designated as such by HUD.

“Qualified Management Company” means a Management Company that meets the education requirements specified in Section 12, Education Requirements, and is not disqualified by MBOH to serve as a Management Company on existing, new or additional tax credit Properties or Projects, based upon the company’s: (a) failure to complete timely any required training; (b) failure to have or maintain any required certification; (c) record of noncompliance, or lack of cooperation in correcting or refusal to correct noncompliance, on or with respect to any tax credit or other publicly subsidized low-income housing property; or (d) delinquent MBOH late fees (unless the Management Company demonstrates to the satisfaction of MBOH that such noncompliance or lack of cooperation was beyond such company’s control).

“Qualified Nonprofit Organization” means, with respect to a Project, an organization exempt from federal income tax under Section 501(c) (3) or (4) of the Internal Revenue Code, which is not and during the Compliance Period will not be affiliated with or controlled by a for-profit organization, whose exempt purposes include the fostering of low income housing, which owns an interest in the Project, which will materially participate in the development and operation of the Project throughout the Compliance Period, and which is not affiliated with or controlled by a for-profit organization.

“Rehabilitation,” “Rehab” or “Substantial Rehabilitation” means renovation-rehabilitation (e.g., capital improvements and/or major repairs necessary as indicated by the capital need assessment) of a building or buildings to house HC units meeting the required minimum Hard Cost Per Unit thresholds specified in Section 3, Substantial Rehabilitation.

“Related Party” means an individual or entity whose financial, family or business relationship to the individual or entity in question permit significant influence over the other to an extent that one or more parties might be prevented from fully pursuing its own separate interests. Related parties include but are not limited to: (a) family members (sibling, spouse, domestic partner, ancestor or lineal descendant); (b) a subsidiary, parent or other entity that owns or is owned by the individual or entity; (c) an entity with common control or ownership (e.g., common officers, directors, or shareholders or officers or directors who are family members of each other); (d) an entity owned or controlled through ownership or control of at least a 50% interest by an individual (the interest of the individual and individual’s family members are aggregated for such purposes) or the entity (the interest of the entity, its principals and management are aggregated for such purposes); and (e) an individual or entity who has been a Related Party in the last year or who is likely to become a Related Party in the next year.

“Reservation” means MBOH’s Initial Allocation of HCs from a particular year’s federal LIHTC allocation to the state for purposes of later Carryover Commitment and/or Final Allocation to a particular Project, as documented by and subject to the requirements and conditions set forth in a written Reservation Agreement, the Applicable QAP and federal law.

“Reservation Agreement” means a written contract entered into between MBOH and the taxpayer to provide for a Reservation and setting forth the terms and conditions under which the taxpayer may obtain a Carryover Commitment or Final Allocation.

“Restrictive Covenants” means the recorded covenants required by Section 42 of the Code. Restrictive Covenants may also be referred to as the Land Use Restriction Agreement (LURA).

“Selection Criteria” means and includes all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides and priorities set forth in this QAP and all federal requirements.

“Selection Standard” means the standard for selection of Projects to receive an Award of HCs set forth in the Award Determination subsection of Section 9, Evaluation and Award, i.e., the MBOH Board’s determination that one or more Projects best meet the most pressing affordable housing needs of low-income people within the state of Montana as more specifically set forth in such subsection.

“Small Project” means, for purposes of the Soft Cost Ratio limitation in Section 3.0E, a Project with 24 or fewer low-income Housing Credit units.

“Small Rural Project” means a Project: (a) for which the submitted tax credit Application requests tax credits in an amount up to but no more than 12.5% of the state’s Available Annual Credit Allocation, and (b) proposed to be developed and constructed in a location that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula.

“Soft Costs” means the costs of professional work and fees, interim costs, financing fees and expenses, syndication costs, soft costs and Developer’s fees as shown in the Applicant’s properly completed UniApp, Section C - Uses of Funds. Soft Costs do not include operating or replacement reserves.

“Soft-Cost-to-Hard-Cost Ratio” or “Soft Cost Ratio” means total Soft Costs divided by the sum of total Hard Costs (as calculated in the UniApp) and land value (the highest value of what is shown in a comparative market analysis, appraisal or arm’s length sale). Land value is added regardless of whether land is donated, leased, purchased or otherwise acquired.

“Sources and Uses” means the sources and uses of funds as specified in the UniApp.

“Substantial Change” means a substantial change in the Project from the Project as set forth in the Application, and includes a change in or to:

- A member of the Development Team occurring prior to Placed in Service;
- A change or amendment to the Developer Fee agreement or Consultant Fee agreement;
- Participating local entity;
- Quality or durability of construction;
- Number of units or unit composition;
- Site or floor plan;
- Square footage of Project building(s);
- Project amenities;
- Income or rent targeting;
- Rental subsidies;
- Target group;
- Project location;
- Sources and Uses (to the extent any line item of the Sources of Funds or any section of the Uses of Funds of the UniApp changes by 10% or more);
- Common Space square footage, location or purposes;
- Housing Credits required for the Project;
- Extended Use Period;
- Any Application item or information required by the Applicable QAP;
- Any item that would have resulted in a lower Development Evaluation Criteria Score under the Applicable QAP; and
- Any other significant feature, characteristic or aspect of the Project.

“Total Project Cost” mean all costs shown in UniApp Section C, Part II, Uses of Funds

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line "Total Projects Costs without Grant Admin". Total Project Cost does not include grant administration costs.

"Total Project Cost Per Square Foot" means Total Project Costs divided by Project Square Footage shown in the Applicant's properly completed UniApp Supplement, Section C, Cost ~~Limitations and Requirements Fees Tab~~.

"Total Project Cost Per Unit" means an amount calculated by dividing Total Project Costs by the number of units in the Project, as calculated in the UniApp Supplement, Section C, Cost ~~Limitations and Requirements Fees Tab~~, Part ~~XI I~~, line "Cost Per Unit."

"UniApp" means the most current Uniform Application ~~and Supplement~~ available on the MBOH website at: <http://housing.mt.gov/FAR/housingapps.mcp.x>.

~~"UniApp Supplement" means the Supplement portion of the UniApp.~~

"Unit" means any residential apartment or single-family home.

"Vacancy Rate" means percentage of vacant affordable units in the Application's market area or in the property.

## SECTION 2 - OVERVIEW OF HOUSING CREDITS

A BRIEF SUMMARY OF SOME ELEMENTS OF THE HOUSING CREDIT IS AVAILABLE ON THE MBOH WEBSITE AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THERE ARE NUMEROUS TECHNICAL RULES GOVERNING A BUILDING'S QUALIFICATION FOR THE HOUSING CREDIT, THE AMOUNT OF THE HOUSING CREDIT, AND AN OWNER'S ABILITY TO USE THE HOUSING CREDIT TO OFFSET FEDERAL INCOME TAXES. ANYONE CONSIDERING APPLYING FOR HOUSING CREDITS SHOULD REFER, IN ADDITION TO THIS QAP, TO SECTION 42 OF THE UNITED STATES INTERNAL REVENUE CODE (26 U.S.C. § 42). DEVELOPERS OR OWNERS INTERESTED IN APPLYING FOR A CREDIT ALLOCATION SHOULD CONSULT THEIR OWN TAX ACCOUNTANT OR ATTORNEY IN PLANNING A SPECIFIC TRANSACTION.

## SECTION 3 - MONTANA SPECIFIC REQUIREMENTS

### A. Eligible Applicants

#### 1. ~~First Housing Credit Project Must Be Completed~~

An Applicant who previously received an Award of Credits for its first Housing Credit Project in Montana (~~the "In-Process Project"~~) may not receive an Award of Credits for another Housing Credit Project until the ~~first In-Process Project has been issued Form(s) 8609-achieved 100% qualified occupancy and an MBOH compliance audit has been conducted which revealed no significant problems~~. For purposes of this rule, Applicants are considered to be the same Applicant if the ~~Applicants are Related Parties Applicant has an Identity of Interest with the In-Process Project or if the same Developer or a Related Party of the Developer will receive more than 50% of the Development Fees for both Projects~~. The foregoing rule does not apply to a subsequent Housing Credit Application if the Developer partners with an Experienced Developer who will be entitled under a written agreement to receive at least 50% of the Developer Fee on the subsequent Project. ~~For purposes of this Section 3.A, an In-Process Project is any 9% Credit Project for which MBOH has issued a Reservation in any prior Credit year but has not issued a Form 8609, and for which the Reserved Credits have not been returned to or rescinded by MBOH.~~

#### 2. ~~Applicant Cannot Exceed Cumulative Credit Maximum~~

~~An Applicant is not eligible to submit a Letter of Intent or a full Application for 9% Credits if an Award of Credits for the Applicant Project would cause the Applicant's cumulative Credit~~

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amount to exceed the Cumulative Credit Maximum. The Cumulative Credit Maximum is \$15 million in total Credits for the ten year period (not including Credits awarded for tax-exempt bond developments). The Cumulative Credit Maximum applies in addition to the Maximum Credit Award provisions in Section 6.

For purposes of the Cumulative Credit Maximum:

(a) an Applicant's cumulative Credit amount is the sum of: (i) the Applicant's share(s) of the ten-year amount of Credits awarded to any In-Process Project(s) with which the Applicant has an Identity of Interest, and (ii) the Applicant's share of the ten-year amount of Credits requested for the Applicant Project;

(b) an In-Process Project is any 9% Credit Project for which MBOH has issued a Reservation in any prior Credit year but has not issued a Form 8609, and for which the Reserved Credits have not been returned to or rescinded by MBOH;

(c) The Applicant's share of the ten-year amount of Credits awarded to any In-Process Project is 100%, unless the Applicant is a co-Developer, co-Owner or Consultant for the In-Process Project; in such event, the Applicant's share is the same percentage of the Project's ten-year Credit amount as the percentage of Developer Fee the Applicant is entitled to receive for the Project or the percentage interest that Applicant owns in the Project; and

(d) Applicant must provide any documents and information regarding any In-Process Project(s) or proposed Project as requested by MBOH for purposes of determining whether an Applicant is eligible under this Cumulative Credit Maximum to submit an LOI or Application.

### **3. Other Disqualifying Conditions**

The Applicant is not eligible to apply for Credits if the Applicant or any member of the Applicant's Development Team is debarred from federal programs or FHLB (Federal Home Loan Bank), prohibited from applying for LIHTCs by another state HFA for disciplinary reasons, or has delinquent late fees due and payable to MBOH. If any member of the Development Team has delinquent late fees due and payable to MBOH at any time from submission of Letter of Intent through the Award Board meeting, the Application will be ineligible for an Award of Credits until such fees are paid in full. If such late fees are not paid in full within ten (10) business days of written notice, the Application will be returned and will receive no further consideration. Application fees will not be refunded.

An Application or Project awarded credits must be the same Project as described and represented in the Application from the time of Application-Letter of Intent through the first 5 years of the Compliance Period, except for any changes that are not Substantial Changes or any Substantial Changes that have approved by MBOH or the MBOH Board as provided in the Applicable OAP. This includes ownership, development team members, the physical property, and any Project characteristics proposed or promised in the Application (e.g., targeting, amenities, green, energy, etc).

**Commented [A11]:** Revised for consistency with Application definition.

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## **B. Minimum Set Aside**

A Project must meet the federally-required minimum set aside requirements, i.e., the 20-50 test, 40-60 test or income averaging (IA). Income averaging (IA) is available only to the extent permitted and subject to the procedures, restrictions and other requirements specified in MBOH compliance materials. If income averaging is selected, 3% of Units or a minimum of one Unit, whichever is higher, must be targeted at 20% or 30% if 10% of the units are targeted at 70% or above.

**Commented [A13]:** Public Comment: GMD

## **B.C. Projects Seeking Property Tax Exemptions**

For Applications proposing a property tax exemption for rental housing providing affordable housing to lower-income tenants pursuant to Mont. Code Ann. § 15-6-221, the Application must affirmatively commit to providing a minimum of 50% of the Units in the property to tenants at 50% of the area median income, with rents restricted to a maximum of 30% of 50% of area median income, as calculated under Section 42. For combined 4%/9% Projects, this requirement will be applied to the Project as a whole, rather than separately to the 4% and 9% portions of the Project.

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### **C-D. Housing Credit Proceeds**

In order to allow MBOH to adequately evaluate Sources and Uses for Housing Credit Projects, the Applicant is required to provide information to MBOH regarding the proceeds or receipts generated from the Housing Credit.

At Application, expected Credit proceeds must be estimated by the Applicant. **Within 30 days after the partnership or operating agreement is signed by all parties, the Applicant must provide MBOH with a copy of the executed agreement.** If MBOH does not receive a copy of the executed agreement within 30 days of execution, a late fee will be assessed. Prior to issuance of IRS Form 8609(s), MBOH will require the accountant's certification to include gross syndication proceeds and costs of syndication, even though the costs are not allowed for eligible basis.

### **D-E. Sources and Uses Certification**

Applicants must certify that they have disclosed all of a Project's Sources and Uses, as well as its total financing, and must disclose to MBOH in writing any future changes in Sources and Uses over 10% in any UniApp section or any increase in Soft Costs throughout the development period (until 8609's are received). Applicant's certification of such disclosure must be provided to MBOH at Application, at 10% Cost Certification, at any disclosure of changes in Sources and Uses over 10% and at Final Cost Certification on the ~~MBOH- Disclosure~~ Sources and Uses Certification Form.

### **E-F. Development Cost Limitations**

To balance affordable housing needs in Montana with appropriate and efficient use of the state's allocation of ~~tax-Housing Credit~~ authority, MBOH has adopted the following cost limitations and requirements for purposes of calculating the Housing Credit amount for a particular Project. These cost limitations are based upon and in accordance with NCSHA standards.

#### **1. Hard Cost Per Unit/Hard Cost Per Square Foot and Total Project Cost Per Unit/Total Project Cost Per Square Foot**

Hard Cost Per Unit, Hard Cost Per Square Foot, Total Project Cost Per Unit and Total Project Cost Per Square Foot are subject to the specific limitations provided in other sections of this QAP. In addition, even for those projects meeting such specific limitations, MBOH will evaluate such Cost Per Unit and Cost Per Square Foot for all Projects for reasonableness, taking into account the type of housing, other development costs as detailed below, unit sizes, the intended target group of the housing and other relevant factors. MBOH will also consider in this review the area of the state and the community where the Project will be located.

All Applications must provide justification for development costs. These costs will be analyzed and scrutinized considering the individual characteristics of the Project listed above and will be compared to other like Projects.

Even though the costs of some Projects may be justifiable and even in some contexts considered reasonable given their unique characteristics, MBOH may decline to Award Credits to a Project where it determines that costs do not reflect the optimal use of Housing

Credits.

The following limit must be met:

- o Total Project Costs Per Unit may not exceed \$240,000.

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Applications exceeding this limit will be returned un-scored and will receive no further consideration, and the application fee will not be refunded. Projects must meet this limit at Letter of Intent, Application, 10% Cost Certification and Final Cost Certification. If this limit is exceeded at Final Cost Certification, negative points will be assessed with respect to future Applications as provided in Section 9, Item 9, Developer Knowledge and Responsiveness. The negative points assessment provided in this paragraph for exceeding the Total Project Costs Per Unit limit will apply only prospectively to Projects Awarded Credits in the 2017 or later Award rounds.

### Costs Per Unit Limit Exceptions

Exception requests must be submitted to MBOH staff by the first Monday in March 2020 before submission of Letter of Intent. Exceptions will only be considered for preservation of existing affordable housing and based upon documented justification (e.g., negotiated sales price or unusual needs identified in a capital needs assessment). MBOH staff will evaluate and present exception requests to the MBOH Board. Exceptions may be granted by the MBOH Board in its sole discretion.

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### 2. Additional Cost Limitations

Applications must comply with the following limitations on Contractor Overhead, General Requirements, ~~Contractor-Builder~~ Profit and Developer Fee. To the extent an Application exceeds these cost limitations, as calculated in UniApp Section C, Cost Limitations and Requirements, the excessive costs will be reduced to the limit amount for all purposes under the HC program, including without limitation, calculation of basis and eligible Project costs, determination of Credit eligibility, and any Award, Reservation (Initial Allocation) or Final Allocation of Credits.

#### a. ~~Contractor's~~ Builder's Overhead

~~Builder~~~~Contractor's~~ Overhead is limited to a maximum of 2% of Construction Costs.

#### b. General Requirements

General Requirements are limited to a maximum of 6% of Construction Costs.

#### c. ~~Contractor-Builder~~ Profit

~~Builder~~~~Contractor~~ Profit will be limited to a maximum of 6% of Construction Costs.

#### d. Developer Fees

Developer Fees for New Construction or Rehabilitation will be limited to a maximum of 15% of Total Project Costs. For purposes of this Developer Fee limit, Total Project Costs do not include Developer Fees, Project reserves or land costs. HC Consultant fees (amount must be disclosed) will be included as part of and subject to the limit on Developer Fees. Architectural, engineering, and legal services are considered to be professional services, and fees for such services are not included as Developer Fees for purposes of this limitation.

Developer fees for Acquisition will be limited to a maximum of 15% of the Project Acquisition costs.

#### e. Disclosure of Transactions Involving Related Parties

If the development includes transactions with Related Parties, all such transactions must be disclosed. Failure to fully disclose Related Party transactions may result in the Project's not receiving an Award of Housing Credits. MBOH reserves the right to negotiate lower Developer



Fees, ~~BuilderContractor~~ Profit or other Soft Costs on Projects involving Related Party transactions.

**f. Limitation on Soft Costs**

The Soft-Cost-to-Hard-Cost Ratio ("Soft Cost Ratio") for the Project, based upon the Application's UniApp, may not exceed: (i) 32% for Large Projects (more than 24 units); (ii) 37% for Small Projects (24 or fewer units) or Small Rural Projects; or (iii) 40% for 4% Credit Projects. For combined 4%/9% Projects, this limit will apply to the Soft Cost Ratio calculated based upon the combined costs for the 4% and 9% Projects. If the Soft Cost Ratio for a Project exceeds the applicable maximum, MBOH will contact the Applicant regarding the excessive costs and allow the Applicant to specify how and by what amount its Soft Costs will be reduced to comply with the maximum. The Applicant must communicate its chosen Soft Costs adjustments to MBOH staff in writing within ten (10) business days after such communication and the Application will be deemed amended to reflect such adjustments for all purposes under the HC program. All such Soft Cost adjustments and the Application, as amended to reflect such adjustments, must comply with this QAP in all other respects. If the Applicant fails to communicate its Soft Cost adjustments to MBOH staff within the required time, ~~the Application will be returned unscored and fees will not be refunded-MBOH staff will decide how and by what amount Soft Costs will be reduced to comply with the maximum and the Application will be deemed amended to reflect such adjustments for all purposes under the HC program.~~ Projects must meet this limit at Letter of Intent, Application, 10% Cost Certification and Final Cost Certification. For Projects Awarded Credits for 2018 or later years, if this limit is exceeded at Final Cost Certification, negative points will be assessed with respect to future Applications as provided in Section 9, Item 9, Developer Knowledge and Responsiveness.

**g. Professional Fees**

Professional fees include but are not limited to fees for architectural, engineering, environmental, accounting, legal, market analysis, construction management and asset management services. The financial narrative in the Uses of Funds Tab of the UniApp must address and provide justification for professional fees. These fees will be compared as a percentage to construction costs for reasonableness. Specific limits may be adopted in a future plan if needed.

**F.G. Underwriting Assumptions and Limitations**

**1. Credit Percentage Rate for Housing Credit Calculation**

The credit percentage rate published by the federal government for the month prior to the date of Application will be used by Applicants and MBOH for purposes of preparation, submission, underwriting and evaluation of Applications and Award of HCs.

**2. Operating Expenses**

MBOH will evaluate Operating Expenses and Vacancy Rate underwriting assumptions for all Projects for reasonableness, taking into account the type of housing, unit sizes, intended target group of the housing and the location of the Project within the area of the state and the community. Staff may require the Applicant to provide additional justification and documentation regarding any Operating Costs deemed to be outside the normal range.

**3. Debt Coverage Ratio**

The Debt Coverage Ratio ("DCR") should be:

- For Projects whose DCR is projected to trend upward through the first 15 years of normal operation, the DCR should be between 1.15 and 1.35 in the first year of normal operation, i.e., year 1 as shown on the DCR calculation of the UniApp.
- For Projects whose DCR is projected to trend downward through the first 15 years of

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normal operation, the DCR should be between 1.10 and 1.50 during the entire first 15 years of normal operation i.e., the 15-year period that begins with year 1 as shown on the DCR calculation of the UniApp.

DCR's outside these ranges must be justified in the Application narrative to the satisfaction of MBOH, in its sole discretion. In determining whether the Applicant's justification is acceptable, MBOH will consider the reasonableness of the Project's proposed rent levels, Operating Expenses, reserve payments, projected Vacancy Rates, debt service obligations, Soft Costs and amount of Credits requested. If the DCR, as underwritten by MBOH at Application, falls outside the ranges specified above without justification acceptable to MBOH, MBOH will reduce the amount of Credits requested by the Applicant to an amount determined by MBOH to be necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period.

MBOH considers several variables, including projected Vacancy Rates (which may require upward adjustment for Small Projects) and Operating Cost data, in conjunction with debt service coverage, in judging the long-term financial viability of Projects. MBOH may require adjustments to rents or Credit amount to assure the Credits Awarded are no greater than necessary to make the Project feasible.

MBOH will evaluate the DCR at Application, at 10% Cost Certification and at Final Cost Certification. In addition, for Projects Awarded Credits for 2018 or later years, if the DCR at 10% or Final Cost Certification has changed significantly from the DCR as underwritten by MBOH at Application, MBOH may assess negative points to the next Application that includes any member of the Development Team.

#### 4. Total Expense Ratio

MBOH will review the Project's Total Expense Ratio for reasonableness. The Total Expense Ratio is the total income divided by total expenses, including debt service. As a benchmark, NCSHA recommended practices use a 1.10 ratio. The Board will consider projects on a case by case basis that deviate materially from this ratio. Projects should discuss this ratio in their narrative if this ratio deviates materially.

#### 5. Maximum Rents

Rents must be limited to the levels specified in the Application and Declaration of Restrictive Covenants. In addition, if rent increases are permitted from time to time as a result of increase in the Area Median Income ("AMI"), such increases shall not exceed five percent (5%) in any calendar year for existing tenants.

The MBOH Board may also require that rents be adjusted to or maintained at a specified percentage of maximum target rent throughout the Extended Use Period if the Debt Coverage Ratio or Expense Ratio is outside the range recommended or required under this OAP. If required for a particular Project, this limitation must be specifically included as a condition of the HC Award and included in the Project's Restrictive Covenants.

#### 6. Operating Reserves

Minimum operating reserves must be established and maintained in an amount equal to at least four months of projected Operating Expenses, debt service payments, and annual replacement reserve payments. The specific requirements for reserves, including the term for which reserves must be held, must be included in the limited partnership or operating agreement and meet the requirements of the Investor. Using an acceptable third party source, this requirement can be met by cash, letter of credit from a financial institution, or a Developer guarantee that a syndicator has accepted the responsibility for a reserve.

#### 7. Replacement Reserves

Replacement reserves must be contributed in an amount equal to at least \$300.00 per unit

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**Commented [A20]:** Language added in response to comments.

annually. Exceptions may be made for certain special needs or supportive housing developments. Exceptions must be documented and will be reviewed on a case by case basis. The specific requirements for reserves, including the term for which reserves must be held, will be included in the limited partnership or operating agreement and meet the requirements of the Investor.

### **8. Utility Allowances**

The Montana Department of Commerce Section 8 Utility Allowances are the only acceptable utility allowances for Applications, unless otherwise provided by USDA (Rural Development), an MBOH-approved allowance or a HUD Utility Model. Utility allowances provided by utility providers will not be considered or accepted. ~~For purposes of calculating the Maximum Rent limitation under this QAP, the gross rent is the sum of the rent amount payable by the tenant and the tenant paid utility allowance amount determined in accordance with this Subsection 8.~~

### **9. Additional Underwriting Assumptions**

The following underwriting assumptions will be used by MBOH for underwriting of all Applications:

- Vacancy rates: 10% - 20 units and less, 7% - more than 20 and up to 50 units, 5%-more than 50 units or 100% project based rental assistance;
- Income Trending: 2%;
- Expense Trending: 3%;
- Reserves Trending: as proposed in Application but not to exceed 3%;
- Debt Coverage Ratio: see "Debt Coverage Ratio" subsection above;
- Structured Debt for pro-forma not allowed; and
- Operating expenses per unit: \$3,000-\$6,000 annually.

These underwriting assumptions will be used at Application, 10% Cost Certification and Final Cost Certification. Credits will not be Awarded in an amount beyond those needed to make the Project feasible according to these underwriting assumptions.

### **G.H. Project Accessibility Requirements**

The Fair Housing Act, including design and accessibility requirements, applies to HC properties. In addition to meeting Fair Housing Act requirements, MBOH requires that all New Construction units and common areas and Rehabilitation that at least replaces interior walls and doors must incorporate the following:

For Rehab, items 3 and 4 below apply to all units and all floors where moving walls, removing wall coverings, or doing new wiring or rewiring.

1. 36 inch doors for all living areas (except pantry, storage, and closets).
2. All door hardware must comply with Fair Housing Act standards for all units.
3. Outlets mounted not less than 18 inches above floor covering.
4. Light switches, control boxes and/or thermostats mounted from 36 to 48 inches above floor covering.
5. Walls adjacent to toilets, bath tubs and shower stalls must be reinforced for later installation of grab bars.
6. All faucets must be lever style.
7. A minimum of a ground floor level half-bath with a 30X48 inch turn space (also required in Rehabilitation unless waived by staff for structural limitations or excessive cost, etc.) (does not apply if there is no living space on the ground floor level).
8. No-step entry to all ground floor level units.
9. Compliance with accessibility requirements must be certified in the architect's letter of certification submitted with the 8609(s) submission. It is suggested but not

required that Projects also include parking for caregivers for tenants with disabilities and that a lease addendum provide for moving a household without tenants with disabilities from a handicapped accessible unit to a regular unit if the handicapped accessible unit is needed for rental to a tenant with a disability.

## **H.I. Energy, Green Building and Other Initiatives, Goals and Requirements**

The following items in Subparagraphs A through K specify voluntary initiatives and goals which MBOH encourages Developers to consider in the planning and development of Projects, as well as certain Project requirements. These items are required only where so indicated by the use of mandatory language (e.g., "must"). Such initiatives, goals and requirements are subject to any further applicable provisions of this QAP.

### **1. Integrated Design Process and Community Connectivity**

Project development and design includes a holistic approach. Processes include neighborhood and community involvement to ensure Project acceptance and enhancement. Integrated design processes ensure higher quality finish Project. Existing neighborhood edges, characteristics, fabric are considered in the Project design. Some considerations may include but are not limited to a community design charrette, incorporating Project into neighborhood fabric, energy modeling, commissioning, infrared testing, etc. (see Required Infrared Testing for Projects Awarded Credits, below).

### **2. Visitability and Universal Design Principles**

Applicants should consider inclusion of visitability and universal design principles in development of the Project. MBOH encourages strong advertising of accessible features when advertising new construction through the Multiple listing services or through MontanaHousingSearch.com.

### **3. Sustainable Site, Location and Design**

The building(s) and Project site, including the surrounding area, provide opportunities for education, alternative transportation, services, and community facilities. This is evidenced, for example, by Projects using existing infrastructure, reusing a building or existing housing, redeveloping a greyfield/brownfield, or developing in an existing neighborhood. Design elements use the site's characteristics and reduce impact on the site allowing for open space and other amenities, such as infill projects, rehabilitating existing building(s), rehabilitating existing housing, providing carpooling opportunities, using well water for landscaping, etc.

### **4. Passive House Standard**

Passive House is a voluntary international building standard developed by the Passive House Institute (PHI), located in Darmstadt, Germany (referred to as the "Passive House Standard"). The Passive House Standard is composed of several strict performance requirements for new building construction. For the renovation of existing buildings, PHI developed a similar if slightly more lenient performance standard. The resulting performance represents a roughly 90% reduction in heating and cooling energy usage and up to a 75% reduction in primary energy usage from existing building stock.

### **5. Energy and Water Conservation**

Design features, product selection and renewable energy options directly reduce use of resources and result in cost savings. Design and product selection exceeds applicable energy codes in performance. Examples include but are not limited to Energy Star appliances, drip irrigation, low flow fixtures, dual flush or composting toilets, ground source heat, duct sealing, rain water collection, and low water consumption plants.

## **6. Material and Resource Efficiency**

Material selections are better quality, designed for durability and long term performance with reduced maintenance. Products used are available locally and/or contain recycled content. Construction waste is reduced in the Project through efficient installation or recycling waste during construction. Considerations include but are not limited to construction waste management specification, recycled content products, local materials, reuse existing building materials, certified lumber, and sustainable harvest lumber.

## **7. Amenities**

Applicants may consider for inclusion in the Project the amenities listed in the Amenities Form to be provided at no charge to tenants in the Project. Luxury amenities will not be considered or funded with tax credits. Items deemed luxury amenities include but are not limited to swimming pools, golf courses, tennis courts and similar amenities. The added costs of the Project attributable to higher quality amenities will be considered on a Project by Project basis for a cost to benefit assessment.

Amenities provided will not be used for Commercial Purposes. All Projects previously Awarded tax credits are subject to this restriction but are grandfathered only to the extent Commercial Purposes were specifically included in the Application.

## **8. Healthy Living Environments (Indoor Environmental Quality)**

Materials and design contribute to a healthy and comfortable living environment. Mechanical system design, construction methods and materials preserve indoor air quality during construction as well as the long term performance such as fresh air circulation and exhaust fans, bathroom and kitchen fans exhausting air and moisture, material selection with low toxicity and low VOC (volatile organic compounds) paints, sealants, and adhesives.

## **9. Smoke-Free Housing**

Promoting healthy behaviors can also have a large impact on residents at no additional cost to the Developer. Smoke-free policies protect residents against the harmful health impacts of tobacco smoke, greatly reduce the risk of fires, and prevent damage to units caused by tobacco smoke. Such policies also make properties more attractive to those who do not allow smoking in their own homes.

For New Construction Projects seeking or awarded 2016 or later year Credits, the Owner (and any Management Company) must establish and implement a written policy that prohibits smoking in the units and the indoor Common Areas of the Project, including a non-smoking clause in the lease for every Project unit. The Owner (and any Management Company) rather than MBOH will be responsible to establish, implement and enforce such written policy and lease clause. The Owner and Management Company also must make educational materials on tobacco treatment programs, including the phone number for the Montana Tobacco Quit Line, available to all tenants of the Project. The Montana Tobacco Use Prevention Program Smokefree Housing Project can provide educational materials and smokefree signage to property owners and managers free of charge, as requested. If smoking is allowed outside on the Project property, it is recommended that the written smoking policy require that smoking be restricted to areas no closer than 20 feet from all building entrances and exits. The written policy must provide appropriate exceptions for bona fide cultural or religious practices.

## **10.State of Montana Building Code**

All Projects must comply with State of Montana Building Code, whether or not the State of Montana building code has been adopted in the Project's jurisdiction.

## **11.Required Infrared Testing for Projects Awarded Credits**

*For Rehabilitation Projects Awarded HCs: Infrared tests will be required on at least 10%*

of units and a representative sampling of Common Areas both before and after the Rehabilitation. ~~At the time of testing there was~~ must be at least 20 degrees temperature difference from outdoors to inside the unit. Infrared testing must be performed by a certified tester. ~~Testing must-~~ demonstrate that improvement has been achieved. MBOH staff may approve changes to the sample size selected. A summary of such testing must be submitted to MBOH within 30 days of testing and reviewed by MBOH to qualify for issuance of IRS Form 8609(s), demonstrating that ~~at the time of testing there was at least 20 degrees temperature difference from outdoors to inside the unit. Infrared testing must be performed by a certified tester.~~

### **~~I-J.~~ Substantial Rehabilitation**

Montana's minimum Substantial Rehabilitation standard is expenditures the greater of (1) ~~\$15,000~~\$25,000 (for 4% Projects)/~~\$25,000~~\$30,000 (for 9% Projects) of Hard Cost Per Unit, or (2) an amount which is not less than 30% of the adjusted basis of the building during a 24-month or shorter period. Because Montana's Substantial Rehabilitation standard is higher than the federal minimum of \$6,200.00 in Hard Costs and 20% of adjusted basis, Montana's higher Substantial Rehabilitation standard applies.

Rehabilitation Projects applying for (9%) competitive credits must meet all requirements of the capital needs assessment and the Application must also include a list of items in each unit that will be replaced, refinished, repaired, upgraded, or otherwise rehabilitation in the Project and a detailed narrative explaining the scope, details and expectations of the rehabilitation.

### **~~J-K.~~ Tax Exempt Bond Financed Projects**

Projects with tax-exempt financing under the volume limitation on private activity bonds ("4% Projects") may be eligible to receive Housing Credits outside the state's tax credit allocation volume cap. Applications must meet all requirements of the applicable QAP and must meet at least the minimum Development Evaluation Criteria score specified in Section 9, below, to receive an Allocation of Housing Credits. Projects with tax exempt financing must submit a certification from the bond financing agency indicating that the Project meets the public purpose requirements of the bonds and that the Project is consistent with the needs of the community. For purposes of Application, evaluation and Awarding tax credits with respect to 4% Projects, the Applicable QAP is the version of the QAP most recently and finally adopted as of the date of Application submission.

### **~~K-L.~~ Eventual Home Ownership**

The opportunity for eventual home ownership allows for Projects, with sufficient justification, to make units available to be purchased by the current tenants after 15 years of successful performance as an affordable rental. Several supplemental Application documents are required for Projects that include eventual home ownership. The Application must: (1) address how the Owner will administer the transfer of ownership to a qualified homebuyer at the end of the Compliance Period; (2) either identify the price at the time of the title transfer or a reasonable process to determine the price; (3) document that the potential owners will be required to complete a homebuyer counseling program; and (4) identify how Reserve for Replacement funds will be used at the time of sale of the properties.

At the time of sale, the HC Owner must provide a copy of the title transfer together with a certificate verifying that the new homeowner completed a homebuyer program within five years prior to the transfer of title. Enforceable covenants must maintain the home as affordable and prevent sale or resale to a realtor, financial institution, or a family with an income over 80% AMI, or more than 80% of FHA appraised value. Families who exceed income levels of 80% of AMI at the time of the sale must have qualified at the appropriate AMI contained in the recorded Restrictive Covenants for the Project evidenced by the

Tenant Income Certification at the initial rent-up for the family. Tenant qualification documentation must be sent to MBOH for approval before the sale is completed. Please contact MBOH for current forms. Units not sold under the Eventual Home Ownership Program must remain in compliance with Section 42 until such time as they are sold to a qualified buyer or the end of the Extended Use Period.

### **L-M. 130% Basis Boost**

#### **1. Basis Boost for QCT and DDA Projects**

Federal law permits MBOH to reserve Housing Credits based on a "basis boost" of 30% for Projects in a Qualified Census Tract ("QCT") or in HUD designated Difficult Development Areas ("DDA"). In addition, a 30% "basis boost" may be available for non-QCT or DDA Projects based upon the specific requirements specified below.

#### **2. MBOH Discretionary Basis Boost for Non-QCT/DDA Projects**

For buildings not already eligible for the 30% "basis boost" by virtue of being located in a QCT or DDA, up to 130% of the eligible basis of a New Construction building or the Rehabilitation portion of an existing building may be considered in Awarding Housing Credits if MBOH determines that an increase in Housing Credits is necessary to achieve the Project's feasibility. MBOH staff may recommend an Award of Housing Credits, and the MBOH Board, at the time it considers authorizing Reservations of Housing Credits, may Award Credits for such buildings based upon a basis boost of up to 30%. Applications for Projects not located in a DDA or QCT may be submitted with requested Housing Credits calculated at up to 130% of eligible basis. The explanation, justification and supporting documentation must specify and explain in detail the applicable considerations supporting the need for the requested basis boost (i.e., any of items a through e, below) and provide a detailed justification for the requested basis boost. The justification must explain why the Project would not be feasible without the basis boost. In addition to the explanation and justification, MBOH may consider any one of the following factors in determining whether Housing Credits will be awarded based upon the discretionary basis boost:

- a. Qualification of the Application as a Small Rural Project;
- b. Qualification of the building location for Rural Development funding;
- c. Targeting of more than 75% of Project units to 50% or below area median income level;
- d. The Project includes historical preservation, Preservation or replacement of existing affordable housing; or
- ~~e. MBOH staff recommendation based upon need for purposes of financial feasibility.~~
- ~~e. The Project is located within a community where unusual market conditions produce higher than normal labor and material costs, unusually high land cost and/or rent and income limits which are too low to support the cash flows required by the Project's financial structure.~~

The MBOH discretionary basis boost does not apply to non-competitive 4% Credits, except as permitted by federal law.

### **M-N. Non-Housing Amenities**

Swimming pools, tennis courts, golf courses, and other similar amenities will not be funded by Housing Credits. Proposed Projects may include such amenities only if the amenities are funded by sources other than Housing Credits. Subject to the requirements of this QAP, garages or car ports may be funded by Housing Credits considering Montana's extreme winter weather.

### **N-O. Accountant and Owner Certification**

Prior to the 10% Cost Certification deadline and at Final Cost Certification, MBOH requires

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an independent third party Certified Public Accountant (CPA) audit report complying with the specific requirements listed in the CPA Audit Report Form.

### **9-P. Information Request and Release Policy**

Requests for information and documents from MBOH will be handled in accordance with and subject to applicable law and the Department of Commerce Public Records Request Policy, which policy is available on the MBOH website.

### **9-Q. Ex Parte Communication Policy**

MBOH Board members should refrain from ex parte communications with interested persons or parties, or their representatives, who may be affected by any matter on which members may take official Board action. Ex parte communications may include communications that take place outside a duly noticed meeting or hearing of the Board, relate to a matter on which the Board may take action to determine to rights or obligations of the person or party, and which convey information or may otherwise influence the Board member regarding the matter.

If a Board member is unable to avoid such communications, the member will be required to disclose at a public meeting of the Board the full content of such communication and the identity of the person making the communication. In addition, the Board member may be disqualified from participating in Board action on the matter. Such communications may also subject the Board to challenge regarding its action on the matter.

Ex parte communications do not include communications regarding general matters of housing, funding for low-income housing, or other Board policy, and do not include Board member speaking appearances, conferences, consulting engagements or other events or settings to the extent not involving communications such as those described above.

The foregoing statement is provided as general information. Ex parte communications are addressed in further detail and governed by the MBOH Ex Parte Communication Policy, available on the MBOH website.

## **SECTION 4 - APPLICATION SUBMISSION AND AWARD SCHEDULE – MANNER OF SUBMISSION**

### **A. Competitive 9% Credit Applications**

Applicants may apply for an Award of 9% Credits (including an Award for a Project combining 9% Credits and other credit sources) for a particular Project no later than the applicable submission deadline specified below or otherwise set by MBOH.

Applicants must submit the Application and the applicable fee (as set forth in Fee Schedule) to MBOH as required in this QAP.

A single Application that combines 9% Credits and other credit sources must include sub-applications with a separate UniApp for each credit source that provides the Project numbers attributable to the sub-application's credit source.

For Projects involving multiple properties in different locations to which different utility allowances and/or income limits apply, a combined Application with sub-applications for each property location must be submitted. Each sub-application must include a separate UniApp that provides the Project numbers attributable to each location. A single Application or sub-application should include all buildings within a single Project.

Complete Letters of Intent/Applications meeting all requirements of this QAP must be received at MBOH's office by 5:00 pm Mountain Time on the Letter of Intent/Application submission date specified below. In the event that any submission date falls upon a





10 minutes or less. The MBOH Board may ask questions of Applicants and discuss proposed Projects for purposes of assisting the Board in determining which Projects it will invite to submit Applications and assisting Applicants in presenting better Applications, but such questions, answers and discussions shall not be binding upon MBOH in any later Award determination or other MBOH process. Applicant presentations will include any comments from any party on the Development Team, videos and presentation materials. Public comment will include in-person comments, live conference call comments and written comments. Comments are subject to reasonable limitation by the Chair to minimize duplication, reading of written materials, etc.

After considering the Letters of Intent, presentations, questions and answers and discussion, the MBOH Board will select those Projects that it will invite to submit Applications. Selection for invitation to submit an Application may be based upon consideration of any of the Selection Criteria permitted to be considered for purposes of an Award under this QAP, but no evaluation or scoring of Letters of Intent will be done or considered for purposes of selection for invitation to submit an Application. No more than 8 Projects will be selected. If the total Credits requested in the Applications for such 8 Projects is less than the amount of Credits available for Award in such round, the Board may invite one or more additional Projects to submit Applications, but may invite only the number of additional Projects necessary to meet the amount of Credits available for Award (the "ceiling"), except that the invited Project that brings the total amount of Credits requested from invited Projects to the ceiling may cause the total Credits request to exceed the ceiling. Each Project so selected by the MBOH Board will be deemed invited to submit an Application. An Application may be submitted only for a Project invited by the MBOH Board to submit an Application. All other Applications will be returned without consideration.

At the Award Determination Meeting, MBOH staff will provide Project Application information to the MBOH Board. Applicants should be available to the MBOH Board to answer questions regarding their respective Applications. The MBOH Board may ask questions of Applicants and discuss proposed Projects but there will be no Applicant presentations. MBOH will provide an opportunity for public comment on proposed Projects and Applications. Applicants shall have a brief opportunity to make comments and respond to any information presented regarding their Applications.

MBOH staff materials provided to the Board will show Small Rural Projects and other Projects in separate groupings. In considering Applications for Award of Credits, the Board may first consider Award to the Small Rural Projects applying for Credits. After any such initial consideration of Small Rural Project Applications, the Board will consider Award of remaining Credits to any Applicant. The Board may but is not required by this provision to select any Small Rural Project for an Award of Credits.

#### **F. 4% Credit Applications for Tax Exempt Bond/Loan Financed Projects**

Projects with tax-exempt financing under the volume limitation on private activity bonds ("4% Projects") may be eligible to receive tax credits outside the state's tax credit allocation volume cap. An Applicant for tax-exempt financing under the volume limitation on private activity bonds also seeking an Award of 4% Credits for a scattered-site Project under a single partnership may apply for such credits by submission of a single Application that includes sub-applications for each property included in the Project.

Full Applications for tax-exempt financing and related 4% Credits may be submitted at any time; submission is not limited to the Application schedule set forth above for 9% Credit competitive awards. However, complete Applications must be received by MBOH at least 6 weeks before the scheduled MBOH Board meeting at which the Application is to be considered. Changes to the Application that require MBOH to re-underwrite the Application will restart the minimum 6-week period.

The Application fee for 4% Projects must be submitted to and received in the MBOH office for the Application to receive consideration. In addition, Final Allocation of 4% Credits is subject to payment in full of applicable bond closing fees at bond closing per the MBOH Private Placement policy available on the MBOH website. Additionally, a 42M letter fee will be charged.

Applications for 4% Projects must meet all requirements of the Applicable QAP, including meeting at least the minimum Development Evaluation Criteria threshold score specified in Section 9 to receive an Allocation of Housing Credits. Projects with tax exempt financing must submit a certification from the bond financing agency indicating that the Project meets the public purpose requirements of the bonds and that the Project is consistent with the needs of the community. For purposes of Application, evaluation and Awarding Housing Credits with respect to 4% Projects, the Applicable QAP is the version of the QAP most recently and finally adopted as of the date of Application submission.

For 4% only projects, a Letter of Intent must be submitted with the request for an inducement resolution. The Letter of Intent does not require a Letter of Intent fee or a mini-market study.

### **G. Combined Credit Applications for Projects Involving Multiple Credit Sources**

A single Applicant may apply for credits by submission of a single Application that combines sub-applications for each property/credit request included in the Project (for example, combined 4%, 9%, 4% applications, or a Housing Credit application that combines Housing Credits and another credit source). Each sub-application must include a separate UniApp that provides the Project numbers attributable to the sub-application's credit source. Letters of Intent and Application for Projects combining 9% Credits with other credit sources must be submitted in a competitive 9% Credit round and by the applicable deadlines specified for such competitive round.

### **H. Application Submission Method for 4% and 9% Letter of Intent and Credit Applications**

Electronic submission of Applications using MBOH's system is preferred but hard copy Applications will also be accepted. Please contact staff (preferably at least a week ahead of the submission deadline) for set up and for specific instructions on how to access this system. In submitting or preparing to submit Applications, Applicants shall not change or create folders or otherwise change the file structure within the funding portal. An Applicant may request an additional folder by contacting MBOH staff.

### **I. Request for Increase in Amount of Credit Reservation**

As the MBOH Board, in its discretion, determines necessary for financial feasibility, returned or unreserved Housing Credits may be used to increase the amount of Housing Credits reserved for a Project after the first round Awards have been made. An increase in the amount of Housing Credits under this subsection will be considered by the MBOH Board as a last resort and requests for such increases will be scrutinized as such under the criteria provided herein. In considering a request for an increase under this subsection, the MBOH Board may consider the following factors:

1. The nature and amount of additional costs, loss of anticipated funding sources or other gap in available Project funding;
2. Significant factors leading to the need for additional Credits;
3. Availability and Applicant's use of measures to mitigate or obtain alternative funding sources to address any funding gap;
4. The need for the additional Credits to make the Project feasible;

5. Availability of returned or unreserved Housing Credits; and
6. Any anticipated potential need for returned or unreserved Credits to fund Projects that would otherwise be funded or require greater funding under the Corrective Award set aside under Section 7.

An Applicant seeking an increase in the amount of reserved Credits must apply to staff in writing for such increase and must submit new financials (UniApp Section C) and supporting documentation for the cost increases (e.g., higher bids than expected, material costs, etc.), and supporting documentation addressing each of the above-specified factors. Staff will review and evaluate the new financials and other supporting documentation and present a recommendation at a later MBOH Board meeting for consideration. Staff will not recommend and the MBOH Board will not approve any increase beyond that necessary to make the Project feasible. Any request for Credits above the amount initially Awarded is considered a request for additional Credits after Initial Allocation and is subject to the provisions of this subsection.

## **SECTION 5 – APPLICABLE FEES**

The amount(s) of and due dates for all fees required or imposed by this QAP, including but not limited to Application, Reservation, 10% Cost Certification, 8609 and Compliance fees, are as specified in the MBOH Housing Credit Fee Schedule Form (the "Fee Schedule"). All fee amounts may be adjusted by MBOH from time to time. Fees are set by MBOH staff, subject to Board approval. The amount and due date of each fee shall be posted on the MBOH website and any adjustments to any fee amount or due date shall be posted on the MBOH website in advance of the effective date of each adjustment.

All fees are nonrefundable unless otherwise specified in this QAP or the Fee Schedule. MBOH will not consider an Application or Letter of Intent if the applicable fee is not paid by the deadline set forth in the Fee Schedule.

### **A. Developer/Owner Reimbursement of Board Legal Expenses**

See Fee Schedule. The Developer/Owner of any Project awarded credits will be required to reimburse MBOH for legal fees and expenses incurred by MBOH with respect to any non-standard request, change, document or other matters relating to Reservation (Initial Allocation), Carryover Commitment, compliance or other aspects of qualifying for or obtaining Housing Credits. Such fees and expenses must be paid within 30 days of MBOH's submission of an invoice. MBOH shall not be required to complete any pending process, approval or other action until such fees and expenses are paid in full.

## **SECTION 6 - MAXIMUM AWARDS**

### **A. Maximum Credit Award**

Twenty percent (20%) of the state's Available Annual Credit Allocation will be the maximum Credit Awarded or Allocated to any one Project or Developer for the current year. ~~The state's Available Annual Credit Allocation is defined as and includes the state's actual or estimated credit ceiling for the current year plus any other available Credits from prior year credit authority determined as of 20 business days prior to the applicable application deadline, and includes any Credits held back pursuant to court order or subject to Award under the Corrective Award set aside.~~ The Developer's or Consultant's percentage of the Development-Developer Fee, as specified in a written development agreement (a copy of which must be included in the Application), will be that Developer's or Consultant's percentage of the 20% limit. The maximum Credit Award for a Project will be determined based upon the state's Available Annual Credit Allocation for the Housing Credit year from

which the Project is first Awarded HCs. ~~If the state's Available Annual Credit Allocation is not known as of 20 business days prior to the applicable application deadline, the Available Annual Credit Allocation from the previous year will be used, subject to later adjustment once the state's actual Available Annual Credit Allocation is known. If an estimated amount is used for Award purposes, all Awards based upon such estimate shall be conditional upon a final determination of the state's actual Available Annual Credit Allocation.~~ The twenty percent (20%) limit shall increase to twenty-five percent (25%) beginning with 2022 Credits, unless Congress extends the 12.5% volume cap increase provided in the consolidated Appropriation Act of 2018, in which case the twenty percent (20%) limit shall continue for the same period as such Congressional extension.

For purposes of calculating the maximum Credit Award amount and determining the amount of Credits available for award or set aside at any time, the Available Annual Credit Allocation shall not include or be adjusted with respect to any increase or decrease as a result of any Credit Refresh.

MBOH does not commit tax credits from future years, except as specifically provided in this QAP. The MBOH Board may Award Housing Credits from a future year's federally allocated Credit ceiling Available Annual Credit Allocation; (1) during the current year full Application cycle as the Board determines necessary in an amount up to 10% of the Credits requested to fully fund a Project for which current year credits are available to fund at least 90% of the Credits requested; or (2) at any time outside the competitive cycle for purposes of funding repair or replacement of a Project building due to a life/safety emergency as determined by the MBOH Board in its discretion. The Applicant must submit a Letter of Intent and the Board must invite the Applicant to submit an Application before making an Award. The Application must meet all QAP requirements.

## **SECTION 7 – SET ASIDES**

### **A. Non-profit**

Ten percent of each state's credit ceiling must be set aside for buildings which are part of one or more Projects involving Qualified Nonprofit Organizations.

The 10% non-profit set-aside requirement may be met by any Award to a Project involving a Qualified Nonprofit Organization. If no Project Awarded HCs involves a Qualified Nonprofit Organization, the non-profit set aside (i.e., 10% of the state's credit ceiling) will be held back for later Award to a Project involving a Qualified Nonprofit Organization.

### **B. Corrective Award**

Such portion of the state's ~~annual federally-allocated Credit ceiling Available Annual Credit Allocation~~ is reserved and set-aside as is necessary for Award of credits to:

- Any Project for which an Application was submitted in a prior round or year, if:
  - a final order of a court of competent jurisdiction determines or declares that such Applicant was entitled to an Award in such prior round or year or requires MBOH to make an Award or Allocation of tax credits to such Project;
  - a final order of a court of competent jurisdiction invalidates or sets aside an Award of credits to an approved Project from such prior round or year and a Reservation Agreement was executed by MBOH and such Applicant prior to issuance of such court order, unless such court order determines that such Project was not eligible or qualified under the applicable QAP to receive an Award of tax credits; or
  - MBOH, upon further consideration of any Award determination as required by and in accordance with the order of a court of competent jurisdiction, determines that such Project was entitled to an Award in such prior round or year.

All requirements and conditions of this Corrective Award set aside provision must be met to receive an Award under this set aside provision. The amount of any Award under the Corrective Award set aside shall be the amount specified by the court, or if no Award amount is specified by the court, an amount determined by MBOH in accordance with this QAP. The Corrective Award set aside shall be funded first from returned or unreserved tax credits from a prior year. Awards may be "future allocated" under this Corrective Action set aside, i.e., such Awards may be made from returned or unreserved tax credits from a prior year and/or the current year's credits at any MBOH Board meeting after the final court order has been issued and presented to MBOH. Such Award need not await the annual Application and Award cycle.

Where a court orders that an amount of the current year's credits be set aside for a Project pending the decision of the court, if the court's decision is not received before the end of the current year, the credits set aside will become classified as the next year's credits, as required by federal code.

If the court orders MBOH to Award credits to any Project under this set-aside, the Project must submit an updated Application so the MBOH can review and underwrite current numbers and assumptions to verify that the amount of credits requested or some other credit amount is justified for Project feasibility, unless otherwise ordered by the court. The corrective awardee must pay the Reservation fee as required in the Fee Schedule.

### **C. General Rules Regarding Set Asides**

MBOH reserves the right to determine in which set-aside a Project will be reviewed (subject to its eligibility), regardless of its eligibility for any other set-aside.

To qualify and receive consideration to receive an Award of Credits under a set-aside, the Project must meet all applicable requirements of this QAP and must receive minimum Development Evaluation Criteria score specified in this QAP.

In the event there are insufficient tax credits available to fully fund all set aside categories, the respective set asides categories shall be funded in the following order of priority: (1) Non-profit; and (2) Corrective Award.

## **SECTION 8 – LETTER OF INTENT AND APPLICATION PROCESS**

Applicants are responsible to read and comply with this Qualified Allocation Plan (QAP) (and any other Applicable QAP) and accompanying materials.

Applicants are responsible to determine the degree that their building(s) and development correspond to the MBOH's Selection Criteria contained in this QAP.

Applicants are responsible to consult their own tax attorney or accountant concerning: (a) each building's eligibility for the Credit; (b) the amount of the Credit, if any, for which their building(s) may be eligible; and (c) their ability and/or their Investor's ability to use the Credit.

### **A. Letter of Intent (LOI)**

All Projects wishing to apply for HCs in Montana must submit ~~a Letter of Intent~~ [LOI](#) by the deadline specified in Section 4 with the applicable fee.

All ~~Letters of Intent~~ [LOIs](#) must be submitted using the Forms posted on the Board's website. The Project Location, type (e.g., family or elderly), ~~Applicant~~ and Developer specified in the ~~Letter of Intent~~ [LOI](#) may not be changed in any later Application. Other information in the ~~Letter of Intent~~ [LOI](#) (e.g., cost information, number of units, unit sizes, income targeting, rents, hard and soft loan sources, etc.) will be considered the Applicant's best estimates and

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may be changed in the Application. A mini-market study is required for purposes of a ~~Letter of Intent~~ LOI for competitive Credit Projects. Full market studies will not be accepted in the LOI process.

Commented [A23]: Public Comment: Travois

## B. Application

An Application may not be submitted for a Project unless an ~~LOI~~ Letter of Intent has been submitted with respect to the Project according to the requirements of this QAP and the Board has invited that Project to submit an Application. MBOH will return all other Applications without consideration, along with the Application fee.

Applicants must commission a full market study as outlined in the MBOH Market Study Form. Such Market Study must be included with the Application submission in accordance with the Threshold Requirements below.

Applicants must complete and submit the Uniform Application ~~and Supplement~~, all Threshold Requirements, full market study and full Application fee by the applicable Application deadline (see Section 4, Application Submission and Award Schedule). Applicants must use the most current Form of the Uniform Application (UniApp) ~~and Supplement~~ available on the MBOH website at: <http://housing.mt.gov/UniformApplication>.

## C. Incomplete Letter of Intent or Application

The Developer/Owner that submits either a ~~Letter of Intent~~ LOI or Application that does not include any threshold item or that is substantially incomplete may submit additional information as requested and within the time specified by MBOH staff. The opportunity to submit such additional information is subject to payment of the applicable fee as set forth in the Fee Schedule. If the applicant does not submit the additional information and applicable fee, the ~~Letter of Intent~~ LOI or Application will be returned to the Applicant and will not be considered further.

## D. Threshold Requirements Are Mandatory

Threshold Requirements are mandatory for all ~~Letters of Intent~~ LOIs and Applications. ~~LOIs~~ Letters of Intent and Applications received not meeting all Threshold Requirements or other requirements of this QAP will be returned un-scored and will receive no further consideration, except as provided above in subsection 8.C. Fees will not be refunded.

Submit complete Applications to MBOH. Applications must be submitted electronically in accordance with the requirements of Section 4.H.

## E. Threshold Requirements

To be eligible for further consideration, all ~~Letters of Intent~~ LOIs and Applications must be submitted by the deadline in accordance with the requirements of this QAP and the following Threshold Requirements.

ALL MBOH FORMS REFERENCED IN THIS QAP ARE AVAILABLE ON THE MBOH WEBSITE AT [HTTP://HOUSING.MT.GOV/MFOQAP](http://HOUSING.MT.GOV/MFOQAP). ALL FORMS SUBMITTED TO MBOH IN OR AS PART OF THE APPLICATION, DEVELOPMENT, UNDERWRITING, ALLOCATION, COST CERTIFICATION, COMPLIANCE OR OTHER PROCESSES UNDER THIS QAP MUST BE THE MOST CURRENT FORM AVAILABLE ON THE MBOH WEBSITE. If the most current Form(s) are not used, submissions may be returned and required to be resubmitted on the correct Form.

Letters of Intent must:

1. Include the applicable fee;
2. Be received by the applicable deadline;
3. Include a mini-market study (for competitive Credit projects) ~~;~~ - full market studies will not be accepted; and
4. Be substantially complete and in the format prescribed in the MBOH Letter of Intent

Commented [A24]: If change is made above this will need to be changed.

Form.

Applications must:

1. Include the Application fee;
2. Be received by the applicable deadline;
3. Include all of the documents, information and other items specified in Threshold Requirements 4 through 31 below;
4. Include a cover letter summarizing the Project, limited to 2 pages;
5. Include a fully completed UniApp, including all applicable Forms, all in the most current forms as posted on the MBOH website;
6. Specify the Qualified Management Company that will provide property management service to the Project and provide a copy of the written agreement with the Management Company evidencing the company's commitment to provide management services. Upon written notice from MBOH that the Application has identified a Management Company that is not a Qualified Management Company, the Applicant must submit to MBOH within ten (10) days a written designation of a Qualified Management Company and a copy of the written agreement with the Management Company evidencing the replacement company's commitment to provide management services;
7. Include a full Market Study prepared and signed by a disinterested third party analyst, with certificate (included in MBOH Market Study [Requirements item under QAP "Forms and Templates" on the MBOH QAP webpage: https://housing.mt.gov/MFOAP#QAP-documents-for-2020-Housing-Credits-2519](#) ~~Form~~) signed by analyst and notarized. Market Studies must be completed within six (6) months prior to the submission date of the Application, must have the market analyst complete a physical inspection of the market area within one (1) year of the Application and must adhere to minimum market study requirements in [the MBOH Market Study ~~Form~~ Requirements](#);
8. Include documentation of Land or Property Control;
9. Include documentation from the applicable local zoning authority that applicable zoning requirements are met or otherwise addressed, e.g., Project is within applicable zoning requirements, part of an approved planned unit development, subject to a zoning change request for which a change request has been submitted, or not subject to any existing zoning requirements. The Application must include documentation from the city or county affirmatively stating how zoning requirements are met or addressed (e.g., affirming that no zoning exists). Acquisition/Rehabilitation Projects may provide documentation that the Project will not require a change in zoning requirements;
10. Include documentation of availability and capacity of utilities to serve the Project, including documentation that utilities are available to the Project and the present proximity of utilities to the Project location. Such documentation must be in the form of a letter or email from the electric, gas/propane, water and/or sewer/septic provider/company, as applicable verifying that the utilities are or will be available to the property and that the provider has the capacity to handle the load or additional load to be added by the Project. Such documentation must address water, sewer, electricity, and as appropriate, gas, propane and garbage pickup. Acquisition/Rehabilitation Projects need only provide a letter or email from the utility provider documenting the expected utility load and the utility's ability to meet such additional load. Documentation of utility availability and capacity must be current (within 18 months prior to Application date). MBOH staff may in its discretion require the Applicant to provide updated documentation. If Applicant obtains an updated letter from the utility provider, a copy of the updated letter must be provided to MBOH at Reservation or with the next submitted quarterly report;
11. Include a preliminary financing letter from a lender indicating the proposed terms



and conditions of the loan. The financing letter must formally express interest in financing the Project sufficient to support the terms and conditions represented in the Project financing section of the Application;

12. Include a letter of interest from an equity provider including an anticipated price based on the market at time of the Application;
13. Except as otherwise provided in this Subparagraph 13, include a comparative market analysis ("CMA") or an appraisal done by an independent (non-related) Montana-licensed real estate professional. Such CMA or appraisal is required regardless of the manner or method of Acquisition and must cover all real estate acquired, including land and/or buildings. **Land and existing building values must be listed separately.** A CMA or appraisal is not required to be submitted if not available in the location of the Project (e.g., if a CMA or appraisal is not available for property located within the exterior boundaries of a reservation). To qualify for this exception, the Application must include documentation demonstrating that a CMA or appraisal is not available for the property-is-located-within-the-exterior-boundaries-of-a-reservation;
14. For Rehabilitation Applications, include a full scale Capital Needs Assessment on the USDA Rural Development Capital Needs Assessment (CNA) template or similar form, projection of a minimum of 15 years a list of items for each particular Unit (identified by Unit number)in each unit that will be replaced, refinished, repaired, upgraded or otherwise rehabilitated, and a detailed narrative explaining the scope, details and expectations of the Rehabilitation. If the CNA will be more than 1 year old as of the date of Application submission, the CNA must include an update to within the most recent 6 months;
15. For Applications proposing Rehabilitation or replacement of existing units, include a preliminary relocation plan addressing the logistics of moving tenants out of their residences and providing temporary housing during the Rehabilitation, the probably length time tenants will be out of their units, and-/or replacement and returning tenants to their residences upon completion of the Rehabilitation or replacement;
16. Include a site plan, and a Design Professional's preliminary floor plan and elevations/photos of existing properties for the Project;
17. For Applications for Projects involving Qualified Nonprofit Organizations and seeking to qualify for the non-profit set aside under Section 7, include: (a) a copy of the IRS determination letter documenting such organization's 501(c)(3) or (4) status; (b) an affidavit by the organization's managing partner or member certifying that the organization is not and during the Compliance Period will not be affiliated with or controlled by a for-profit organization; and (c) documentation that one of the exempt purposes of the organization includes the fostering of low-income housing;
18. For Applications proposing a property tax exemption for rental housing providing affordable housing to lower-income tenants pursuant to Mont. Code Ann. § 15-6-221, include documentation of intent to request that the local government unit where the property is located conduct a public hearing as required by Mont. Code Ann. § 15-6-221(2). Such public hearing must be conducted by the unit of local government where the property is located and documentation of such public hearing must be submitted prior to issuance of the Carryover Commitment. If the Application does not include documentation of intent to conduct the required public hearing, the Project will be underwritten as if no exemption was or will be received. In addition to including documentation of intent to conduct such hearing, the Application must affirmatively commit to providing a minimum of 50% of the Units in the property to tenants at 50% of the area median income, with rents restricted to a maximum of 30% of 50% of area median income, as calculated under Section 42 (for combined 4%/9% Projects, this requirement will be applied to the Project as a whole, rather than separately to the 4% and 9% portions of the Project);
19. Specify the Extended Use Period;

**Commented [A25]:** If the property tax exemption is changed above this will need to be adjusted.

20. For Projects targeted for Eventual Homeownership, provide the ~~supplemental Application~~ documents and information specified in Section 3, Eventual Home Ownership;
21. Specify the selected minimum set aside ~~(20-50 test) or (40-60 test) or income averaging (IA)~~; income averaging (IA) will be available only to the extent permitted and subject to the procedures, restrictions and other requirements specified ~~in~~by MBOH ~~in future~~ compliance materials;
22. Include a copy of both the public notice and the **affidavit of publication** from the publisher, meeting the requirements specified in this Section 8, Public Notice;

- a. Public Notice

An Applicant must place a notice in the local newspaper of the intent to apply for Housing Credits, and encouraging submission of public comment to MBOH. Such notice must include name of Project, number of units, location of Project, for-profit or non-profit status, and, if applicable, intent to request tax-exempt status for the Project. The notice will be placed as a box advertisement in the newspaper within 90 days prior to the due date of the Application and will allow for not less than 30 days for submission of comments to MBOH. The notice must be published twice, with an interval of at least 14 days between the 2 publication dates. A copy of the notice, together with an affidavit of publication showing the dates published, must be included in the Application.

- b. *Example of Public Notice*

(Name of Developer, address, telephone number), a (for-profit/non-profit) organization, hereby notifies all interested persons of (city, town, community name) that we are planning to develop, (Name of Project) an affordable multi-family rental housing complex on the site at (street location). This complex will consist of (number) (one bedroom, two bedroom, or three bedroom) units for (elderly persons/families). This Project (will/will not) be exempt from property taxes.

An Application (will be/has been) submitted to the Montana Board of Housing for federal tax credits financing. You are encouraged to submit comments regarding the need for affordable multi-family rental housing in your area to the Montana Board of Housing, PO Box 200528, Helena, MT 59620-0528 or FAX (406) 841-2841. Comments will be accepted until 5 PM on (specify the date 3 weeks before the MBOH Board Award Determination Meeting (see Section 4, Application Cycle));

23. Include copies of the executed Developer Fee agreement and Consultant Fee agreement;

~~23. Include letters of community support. These support letters must be Project specific and address how the Project meets the needs of the community. New letters of support (as well as new letters of non support) must be submitted for each Application for each Application round. Generic support for affordable housing will not be considered support for the specific Project being considered. These letters will be provided to the MBOH Board for its consideration;~~

24. If the Project is an Elderly Property, specify which exemption for housing for older persons will apply;
25. Include a narrative addressing each of the Development Evaluation Criteria, demonstrating how the Application meets each of these criteria, and providing a specific explanation and justification of the points sought for each scoring item. Narrative references to the Market Study must cite the specific page and paragraph of the Market Study. The narrative must include the Applicant's own proposed total score for each scoring item in the Development Evaluation Criteria and, at the

- conclusion of the narrative, the Applicant's own proposed total score;
26. Include the completed and signed Indemnification Form and ~~Cost~~-Sponsor Certification Form;
  27. For Applicants that include as part of the Development Team a Developer with no previous history with the Montana Housing Credit Program, include the completed and signed Authorization to Obtain Information Form;
  28. Include the explanation and justification for a request for discretionary basis boost, if applicable;
  29. Identify the name of the specific entity that will have Legal ownership of the Project (LP, LLP, etc.) (~~"to be determined" or "TBD" is not acceptable~~);
  30. Documentation of the number of households on current waiting lists for the local public housing authority (the PHA/HRC for the area in which the Project is located) (as required by IRC); and
  31. Include the completed Amenity ~~List and Scoring~~ Form. This completed Form will be provided to the MBOH Board for its consideration.

Applications must also demonstrate that the proposed Projects are financially sound. This includes reasonable financing terms, costs, expenses, and sufficient cash flow to support the operations of the Project, all of which must meet the underwriting standards of MBOH.

## SECTION 9 – EVALUATION AND AWARD

### A. Threshold Evaluation and Considerations

MBOH staff will review all Applications received by the applicable submission deadline for compliance with all Threshold Requirements, including but not limited to completeness, soundness of the development, and eligibility based on federal requirements and this QAP. Except as provided above in subsection 8.C, Applications determined by MBOH staff to not substantially meet all Threshold Requirements or other requirements of this QAP or federal law will be returned un-scored and will receive no further consideration. Except as specifically provided in this QAP, Application fees will not be refunded.

MBOH staff may communicate with Applicants for purposes of providing interpretive guidance or other information or for purposes of clarifying, verifying or confirming any information in Applications, and for the purposes provided in subsection 8.C.

MBOH staff may query an Applicant or other persons regarding any concerns related to a Housing Credit Application or the management, construction or operation of a proposed or existing low-income housing Project. Questionable or illegal housing practices or management, insufficient or inadequate response by the Applicant, General Partners, or Management Company as a whole or in part, may be grounds for Disqualification of an Application and non-consideration for an Award of Housing Credits.

As part of its review of Applications, if MBOH has not received comments from community officials of the Project location, staff will contact such local community officials to discuss relevant evaluation criteria information pertaining to the Application and the proposed Project MBOH may also contact any other third parties to confirm or seek clarification regarding any information in the Application, including but not limited to checking Development Team references, ~~verifying credit reports~~ and verifying information through direct contact with the Project Developer.

Between the submission deadline and the MBOH Board Award Determination Meeting, as required by federal law, MBOH will provide notice of the Project to the chief executive officer (or the equivalent) of the local jurisdiction within which the Project ~~will be proposed to be~~ located and provide such individual a reasonable opportunity to comment on the Project.

Housing Credit Application/Allocations will be subject to three underwriting evaluations: (1) evaluation for purposes of Award; (2) evaluation for purposes of the 10% Cost Certification;

and (3) evaluation for purposes of Final Cost Certification.

MBOH will return and will not consider for an Award of Credits:

1. Incomplete Applications, except as provided above in subsection 8.C.;
2. Unsound Applications, i.e., Projects for which the Market Study and other available market information fails to demonstrate adequate market need within the proposed location community or Projects that are not financially feasible, including but not limited to viable cash flow, based upon MBOH underwriting standards as set forth in this QAP;
3. An Application submitted by an entity with a demonstrated poor track record in completion of development or management of low income housing, whether located in Montana or another state;
4. Applications submitted by Applicants with current Project(s) that have/had numerous or unresolved substantial non-compliance issues or IRS 8823's (consideration will be given to the type of 8823);
5. Any other Application failing to meet any mandatory requirement of this QAP or federal law; and
6. Any Application as otherwise specified in this QAP.

Applications meeting all minimum Threshold Requirements and not excluded from further consideration under this QAP will be evaluated for the amount of Credits needed for feasibility and long term viability and will be evaluated and scored according to the Development Evaluation Criteria section below.

## **B. Amount of Housing Credit Allocation**

Although a proposed development may be technically eligible for a certain Credit amount, federal law prohibits MBOH from allocating more Credits than necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period. Accordingly, an Award of Housing Credits under this QAP will be limited to the amount of Credits that MBOH, in its sole discretion, deems necessary to make the development financially feasible and viable as a qualified affordable Housing Credit Project throughout the Compliance Period.

In determining the amount of Credits necessary, MBOH will consider:

1. The Sources and Uses of funds and the total financing planned for the Project. Funds, including funds from federal sources, such as HOME grant money, Rural Development, and similar funds. Such federal funds may be loaned by or through a parent organization to a Project pursuant to a bona fide loan agreement at an interest rate below the Applicable Federal Rate (AFR). Such loans will not reduce the basis for the Project providing they are true loans.
2. Grants made with federal funds directly to a Project, which will reduce basis.
3. Any proceeds or receipts expected to be generated by the Housing Credits.
4. The reasonableness of the development and operational costs of the Project.

~~Based on its evaluation, MBOH will make a preliminary determination of the amount of Credits deemed necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period.~~ This determination is made solely at MBOH's discretion, and is not intended to be a representation or warranty to anyone as to the feasibility of the development. Rather, it will serve as the basis for making an Award of Credits. A similar analysis will be done at the time of 10% Cost Certification and at Final Cost Certification prior to issuing IRS Form(s) 8609. Neither the selection of a Project to receive an Award of Housing Credits nor the amount of Credits to be allocated constitutes a representation or warranty that the Owner or Developer should undertake the development, or that no risk is involved for the Investor.

## **C. Full Funding of Applications**

Just as MBOH will not allocate more Credits than necessary for the financial feasibility of the development and its viability, MBOH will not award Credits in an amount less than it deems necessary for these purposes. Therefore, if the Board Awards Credits to a Project, it will Award the amount of Credits determined by MBOH staff for the Project based upon the Applicant's requested amount (except for any *de minimis* reduction because of lack of available Credits to fully fund the full Credit amount). If the remaining amount of available Credits is insufficient to fully fund an additional Project, before Awarding Credits to a Project in an amount less than requested by the Applicant (except for any such *de minimis* reduction), the Board will prioritize the remaining Projects for an Award from the remaining Credits, and the first priority Project for such an Award will be allowed 30 days to re-submit its Application resized to the amount of Credits remaining available. After staff underwriting and evaluation of the resized Application, if MBOH staff determines based upon the resized Application that the development is financially feasible and viable as a qualified low income housing Project throughout the Compliance Period, MBOH staff will enter into a Reservation Agreement for the Project. If the first priority Project fails to submit a resized Application within 30 days or MBOH staff determines that the Project is not financially feasible or viable as proposed in the resized Application, the next priority Project will be invited to submit a resized Application, and so on, until remaining Credits are reserved for one of the prioritized Projects.

**D. Development Evaluation Criteria and Scoring**

In addition to evaluation under all other QAP Selection Criteria, Applications will be evaluated and scored according to the following Development Evaluation Criteria.

Awarding of points to Projects pursuant to these Development Evaluation Criteria is for purposes of determining that the Projects meet at least a minimum threshold of 1000 of the total possible 1260 available points to qualify for further consideration. Developments not scoring the minimum Development Evaluation Criteria score of 1000 of the total possible 1260 available points will not receive further consideration.

Non-competitive 4% Credit Bond Deals will meet at least a minimum threshold of 800 of the total possible 1260 available points to qualify for further consideration. Non-competitive developments not scoring the minimum Development Evaluation Criteria score of 800 of the total possible 1260 available points will not receive further consideration.

The Development Evaluation Criteria, other QAP Selection Criteria and information submitted or obtained with respect to Projects will be used to assist the MBOH Board in evaluating and comparing Projects.

Development Evaluation Criteria scoring is only one of several considerations taken into account by the MBOH Board. It does not control the selection of Projects that will receive an Award of tax credits. For purposes of this QAP and HC Awards and Allocations, the QAP Selection Criteria include all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides, priorities and data set forth in this QAP and all federal requirements.

**1. Extended Low Income Use\* (100 points possible)**

Federal law requires a 30-year or longer Extended Use Period. An Application in which the Applicant agrees to maintain units for low income occupancy beyond the Extended Use Period will receive points as indicated below and must incorporate these restrictions into the Restrictive Covenants.

**Years beyond initial 15**

Less than 31 years	0	points
31 or more years	100	points (46 years +)

Eventual Home Ownership\* Applications must also specify an Extended Use Period and will

receive points for the Extended Use Period as provided above (refer to the "Eventual Home Ownership" portion of Section 3 for supplemental Application documentation and information requirements).

**2. Lower Income Tenants\* (200 points possible)**

**a. Income and Rent Level Targeting.**

An Application will receive points for the percentage of eligible units at the percentages of area median income ("AMI") levels listed below. An Application will receive points for 40%, 50%, and 60% categories when the development targets those income and rent levels. Points awarded for 40% units are independent of and not calculated as part of 50% or 60% units, except that the number of 40% units included in the Project, if any, that exceed 10% of eligible units will be added to the number of 50% units for purposes of point scoring under the chart below. Developments will be bound by the terms committed to in the application process through the mandatory Declaration of Restrictive Covenants. Section C, Part IV, Rent and Forecasted Income of the UniApp will be used to calculate the score for this item. Scoring under the following chart is based upon the total number of HC units including a manager's unit if applicable.

Target Median Income Level	Percentage of Eligible Units	Points
40%	10% (or greater)	20 NOTE 1
50%	15-20%	60 NOTE 1
50%	21-40%	80 NOTE 1
50%	41-60%	150 NOTE 1
50%	61-100%	180 NOTE 1
60%	40%	0
60%	41-60%	20
60%	61-100%	40

**NOTE 1:** Rents @ 40% allowed to income qualify to 49% AMI.  
 Rents @ 50% allowed to income qualify to 55% AMI (40-60 election must apply)  
 (Note 1 is applicable to all existing HC properties awarded between 1990-2016, inclusive. For all other projects, such requirements will be included in the Project's Declaration of Restrictive Covenants if applicable).

**b. Income Averaging.**

If Income Averaging is elected by the Applicant for the Project, the Application will be scored under the scoring criteria and points schedule in this subsection 2.b (rather than the criteria and points schedule in subsection 2.a above).

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**Income averaging targeting for 9% Credit Applications.**

Target Median	Minimum Percentage	
Income level	of Eligible Units	Points
20%	5% or greater	(see Note 2)
30%	5% or greater	(see Note 2)
40%	5% or greater	(see Note 2)

NOTE 2: 20 points will be awarded if at least 2 of the 3 targeted percentages above are met; no points will be awarded if less than 2 of the 3 are met.

50%	15-20%	60
50%	21-40%	80
50%	41-60%	150
50%	61-100%	180
60%	40%	0
60%	41-60%	20
60%	61-100%	40
70% & 80%		0

**Income averaging targeting for 4% Credit Applications.**

<u>Target Median</u>	<u>Minimum Percentage</u>	
<u>Income level</u>	<u>of Eligible Units</u>	<u>Points</u>
40%	10% or greater	20
50%	15-20%	60
50%	21-40%	80
50%	41-60%	150
50%	61-100%	180
60%	40%	0
60%	41-60%	20
60%	61-100%	40
70% & 80%		0

**3. Project Location\* (100 points possible)**

An Application will be awarded points to the extent the Project is located in an area where amenities and/or essential services will be available to tenants, determined according to the following specifications. For scattered site Projects, all site locations must meet the following criteria for any points to be awarded. An Application will be awarded points with respect to an amenity or service as specified below, if: (i) a Project is located within 1½ miles of the specified amenity or essential service; (ii) public or contracted transportation (not including taxi or school bus service) is reasonably available to the specified amenity or service (i.e., the Project is located within ¼ mile of fixed bus stop or on a same day call basis) (or letter from provider committing to establish such service); or (iii) where applicable, the specified amenity or service is available via a no-charge delivery service to the Project Location (all distances must be as specified in the Project’s market study):

- a grocery store (convenience store does not count); or
- Medical services appropriate and available to all prospective tenants (e.g., hospital, doctor offices, etc.).

**4. Housing Needs Characteristics\* (100 points possible)**

Development meets area affordable housing needs and priorities and addresses area market concerns, such as public housing waiting lists\* (for all units and tenants), Vacancy Rate and type of housing required.

**a. Local Community Input (30 points possible)**

30 points will be awarded if the Application includes documentation of at least

one of the following forms of Local Community Input, as shown by evidence provided in the Application: (i) local neighborhood meetings held expressly for this Application with attendance rosters and minutes; (ii) local charrettes held expressly for this Application with supporting documents, concept drawings, and input from local community; (iii) other appropriate form of local community input specifically designed to gather local community input for this Application and/or (iv) City or County Commission meeting. In order to obtain the available points under any item, there must be actual local community input in some form. If a community meeting is held but there is no attendance, another form of local community input must be used. No points will be awarded if the meeting or charrette is part of another public or design meeting, unless the minutes demonstrate that a portion of the meeting was specifically dedicated to community input for this Application. No points will be awarded if the Application does not provide evidence of qualifying local community input, including minutes of any meeting, charrette or other form of local community input and copies of any written comments received. Documentation of community outreach efforts to inform and invite community members to attend any of the community input events must be included. All meetings, charrettes and other Local Community input events must be held within 6 months before the Application deadline.

**b. Appropriate Size (35 points possible)**

Points will be awarded for the appropriateness of size of the development for market needs and concerns as reflected in the Market Study. 35 points will be awarded if the number of units being proposed is 50% or less than the number of units needed as projected by the Project's Market Study. No points will be awarded if the number of units being proposed is more than 50% of the number of units needed as projected by the Project's Market Study. For projects developed, rehabilitated or constructed in a location that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula, no points will be awarded if the number of units being proposed is more than 75% (rather than 50%) of the number of units needed as projected by the Project's Market Study. If the Project is existing in the community, the number of units in the Project will be added to the new units needed and the above test will be applied. The Application narrative must address this scoring item with citations to the relevant pages and paragraphs of the market study.

**c. Market Need (35 points possible)**

The Application will be awarded 35 points based upon the required Market Study's documentation that the Project meets the market needs of the community, as follows:

- o Vacancy Rate is at or below 7%; and
- o Absorption Rate is less than 5 months; and
- o Rents are at least 10% below adjusted market rents.

Narrative references to the Market Study must cite the referenced page and paragraph of the Market Study.

**5. Project Characteristics\* (200 points possible)**

**a. 100 points for any one of the following items:**

**i. Affordable Housing Stock**

The Application proposes either the Preservation of existing affordable housing stock (including as part of a local (not national, state or regional) community revitalization plan\* or similar plan) or increases the affordable housing stock, through the use of funds from other sources (e.g., donation



of land, other substantial donations, reduction in taxes through tax abatement (other than non-profit exemption) or impact fees) to leverage the tax credit dollars.

**ii. Qualified Census Tract/Local Community Revitalization Plan**

The Project is located in a Qualified Census Tract,\* and its development contributes to or involves existing housing as part of a local (not national, state or regional) community revitalization plan\* or similar plan. The Application must include any such local community revitalization plan and identify where in the plan such existing housing may be found.

**iii. Historic Preservation**

The Application proposes the Acquisition and/or Rehabilitation of buildings with local, state, tribal and/or federal historic\* preservation designations.

**iv. Project-Based Rental Subsidy**

The Project has project-based rental subsidy for at least 50% of the units. The Application must provide a copy of the relevant contract or other documentary proof of subsidy from the provider. MBOH staff will verify claimed subsidies with the funding source.

**b. 100 points for Green Building and Energy Conservation Standards\*:**

Applicant's justification for green building and energy conservation includes but is not limited to Energy Star building and appliance initiatives, water saving devices and green construction and materials. For New Construction and Rehabilitation, the Application will be awarded 100 points if the Project will include at least 10 of the items as listed and described on the MBOH Green Building and Energy Form. The Application must include the completed MBOH Green Building and Energy Form. The Applicant's architect, who is qualified with respect to energy and green building standards, must provide a letter confirming the listed green building items, as shown in the MBOH Green Building and Energy Form which is referenced in and attached to the architect letter, are incorporated into the Project. For all Projects (New Construction and Rehab), the Form must list each scoring item and **specify each unit** by unit number or number of each unit type (e.g., 4 of the 10 3-bedroom units) that will include the item. This letter and the accompanying Form must be included in the Application. NOTE: The Applicant's architect also must provide certification at Final Cost Certification for 8609(s) purposes confirming that the initiatives were incorporated.

Please refer to Section 3 for mandatory infrared testing for Projects that have been Awarded HCs.

**6. Development Team Characteristics\* (400 points possible)**

Applications meeting all of the requirements of subsections a., b. and c. of this Section 6 will be awarded 400 points. Applications failing to meet any of the requirements of subsection a., b. or c. will be awarded no points for Development Team Characteristics.

**a. Development Team Experience**

Participation by an entity with a demonstrated track record of quality experience in completed development or management of low income housing tax credit Projects. MBOH will consider all members of the Development Team (Applicant, Owner, Developer, General Partner, Management Company, and HC Consultant) and whether housing Projects have been developed and operated with the highest quality either in Montana or another state. Special attention will be paid to existing Projects, amount of active local community participation used to develop Projects, and a management entity with a good compliance

track record and specialized training. If a new Developer, this requirement may be met through Experienced Partners.

**b. Management Education**

(i) one member of the Management Company meets the education requirement under Section 12, and (ii) one member of the Development Team (other than the Management Company) who is directly and actively involved with the Project has been trained by a Nationally Recognized LIHTC Compliance Training Company. For MBOH purposes, to maintain certification, the person must attend a complete class with a Nationally Recognized LIHTC Compliance Training Company at least once every four years (certificates must be attached with each Application). MBOH annual compliance training does not qualify for credit under this category.

**c. Cold Weather Development Experience**

The Project's Developer or Consultant who is actively involved in the actual construction process has experience with Cold Weather Development and Construction, as reported on the MBOH Cold Weather Experience Form. Cold Weather Development and Construction is defined as experience of the HC Developer or Consultant on one or more Projects located above the 40 degrees north parallel.

The application must list all affordable housing including low-income housing tax credit Projects in Montana or any other state developed, owned, managed or consulted on by Applicant and any member of the Development Team or for which an Award of tax credits was received, whether or not such Projects were successfully completed. All Development Team members, including Applicant, Developer, General Partner/Owner, Management Company, and HC Consultant must sign and the Application must include the completed and signed UniApp Supplement Tax Credit Information Release Form, providing consent to the release of information by other third parties.

**7. Participation of Local Entity (60 points possible)**

The MBOH Board has determined that Owner/Developer communication with local entities and/or significant participation of local entities increases the success and acceptance of the Project into the community. For purposes of this scoring item, a local entity includes a provider serving the Project locality from a physical office in the region of the state where the Project is located even if the provider does not maintain a local office in the locality.

**a. Communication/Relationships (30 points possible)**

30 points will be awarded if the Application includes documentation in the form of a detailed and descriptive narrative, confirmed in writing by the local entity, indicating that the Owner/Developer has met with one or more local entities to discuss the local entities' participation in the Project through provision of any of the following:

- a. screening and referring of individuals as prospective tenants;
- b. providing on-site services to Project tenants;
- c. donation of land or sale at a reduced price to enhance affordability;
- d. use of grant money to develop infrastructure or for other uses;
- e. significant fee waivers on local government fees; or
- f. other forms of significant monetary or in-kind support.

**b. Service Commitments/Understandings (30 points possible)**

30 points will be awarded if the Application includes a narrative in which the Owner/Developer commits to provide or arrange for provision of one or more specifically described supportive services for the duration of the Extended Use Period. The narrative must provide evidence of how such described supportive services will benefit the Project. The same component of participation by a

local entity may not be counted toward more than one item, and may be given credit by an award of points only once.

Points will not be awarded for the same item in both this Development Evaluation Criteria 7 and Development Evaluation Criteria 5, Preservation of Affordable Housing.

**8. Tenant Populations with Special Housing Needs\* (100 points possible)**

An Application will be awarded 10 points for each 5% of the units targeting or meeting the following identified needs up to a maximum of 100 points. The Application must specify the number of units targeted for or meeting each category. Section B Part XII, Units Accessibility, of the UniApp will be used to calculate the score for this item. Units may not be counted more than once or in more than one category for purposes of awarding points.

- a. Units targeted specifically for individuals with children or large families (units with 2 or more bedrooms).
- b. Units targeted specifically as Section 504 fully accessible units exceeding minimum fair housing requirements.
- c. Units targeted specifically for persons with disabilities (points limited to a maximum of 25% of units in the Project) (Application must describe the strategy that will be used to market available units to disabled persons throughout the Extended Use Period).
- d. Units targeted to veterans (points limited to a maximum of 25% of units in the Project).
- e. Units targeted to victims of domestic violence (points limited to a maximum of 25% of units in the Project).
- f. Units that provide Permanent Supportive Housing (points limited to a maximum of 25% of units in the Project).

If the Project is an Elderly Property as defined in federal law, the Application will receive 100 points under this provision.

**Example:**

- 2 – 2 bdrm units meet family requirement 20% – 40 points
- 2 – 1 bdrm units exceed section 504 20% – 40 points
- 1 – 1 bdrm unit targeted to mental illness 10% – 20 points
- 5 – 1 bdrm units with no targeting 50% – 0 points
- 10 – Total units in Project – 100 total points received

**9. Developer Knowledge and Responsiveness (Up to minus (-) 400 points possible)**

If an entity or individual participating in a Project as a member of the Development Team identified in an Application has a demonstrated poor track record or demonstrated past management weaknesses with respect to developments in Montana or in another state, or has failed in the past to respond timely to an MBOH letter of inquiry with respect to a Project, MBOH may assign negative points.

MBOH will provide written notice within thirty (30) days of MBOH learning of any event that will result in a negative point assignment, unless MBOH learns of the event after Application submission and prior to the MBOH Board's Award meeting. If MBOH learns of the event after Application submission and prior to the MBOH Board's Award meeting, MBOH will provide written notice to the Applicant within five (5) business days. The written notice must describe the event giving rise to the negative point assignment and specify the Development Team member or members affected by the negative point assignment, the number of negative points to be assigned and the number of future Applications to which negative points will be assigned. If MBOH has learned of the event after Application submission and prior to the MBOH Board's Award meeting, the notice must be provided to the Applicant and affected members of the Development Team and inform such persons or entities that they may respond in writing to MBOH within five (5) business days of the date of the notice or, if earlier, by 3 days prior to the MBOH Board's Award meeting. If MBOH learns of the event outside the period from Application submission to MBOH Board Award meeting, the notice must be provided to the particular Development Team member affected and inform such Development Team member that they may respond in writing to MBOH within thirty (30) days of the date of the notice.

**a. Demonstrated Poor Track Record**

For purposes of determining a participant's track record, MBOH may contact community officials, Development Team or Development Team member references, credit bureaus, other state tax credit administering agencies and any other sources as MBOH deems appropriate. Up to minus (-) 100 points may be assigned for each of the following: (i) demonstrated poor track record with respect to developments in Montana or in another state, and/or (ii) failure to respond within 10 working days of MBOH letter of inquiry. (**Up to Minus (-) 200 points possible**)

**b. Demonstrated Management Weaknesses**

Development Team members with past demonstrated management weaknesses, including but not limited to those management weaknesses listed below may be assigned negative points for this section (**Up to Minus (-) 200 points possible**), for example:

- i. Has not followed-through on the development of a Project from Application to rent-up and operation;
- ii. Has not complied with MBOH submission, compliance or other requirements applicable during Project development, construction and Extended Use Period;
- iii. Has not maintained a Project to Section 42 or other program standards;
- iv. Has or had numerous or outstanding substantial non-compliance issues or IRS 8823's (consideration will be given the type of 8823);
- v. Has not completed required training in a certified compliance training program;
- vi. Has not completed required management compliance retraining at least every four years;
- vii. Has requested income targeting changes that are not supported by unanticipated hardship;
- viii. For Projects Awarded Credits for 2018 or later years, has a debt coverage ratio at 10% cost certification or final allocation that has changed significantly from the debt coverage ratio as underwritten by MBOH at Application;
- ix. Has requested additional credits more than once;
- x. Has made Substantial Changes to previous tax credit applications or has failed to notify MBOH and seek approval of Substantial Changes according to QAP requirements;
- xi. Has significantly diminished the quality and long term viability of a previous Project by lowering costs below a reasonable level;
- xii. Has delinquent late fees due and payable to MBOH;
- xiii. Has intentionally provided false information to MBOH in connection with an Application, Project or any related Board inquiry or process;
- xiv. Has been a member of the Development Team for a prior Project that exceeded maximum Hard Cost Per Unit or Total Project Cost Per Unit at Final Cost Certification; or
- xv. Has been a member of the Development Team for a prior Project Awarded Credits from 2018 or later years that exceeded the applicable maximum Soft Cost Ratio at Final Cost Certification.

Negative points may not be assigned for the same matter under both Section 9(a) and 9(b).

**c. Method of Assigning Negative Points**

Any negative points will be assigned as follows:

- i. The factors that will be considered in determining whether to assign negative points and the number of any negative points to be assigned with respect to poor track record items, management weaknesses and failure to response to MBOH letters of inquiry, include:
  - A. The nature and seriousness of the incident(s);
  - B. The frequency of such incidents;
  - C. The incidents were or were not within the control of the individual or entity;
  - D. The degree and timeliness to and with which the entity or individual responded to correction and educational efforts;
  - E. The responsiveness of the individual or entity in responding timely to fees, penalties and other sanctions imposed;
  - F. The cost or financial harm caused to the Project, the tax credit agency or third parties;

- G. The nature and extent of inconvenience and harm caused to Project tenants;
  - H. The nature and extent of damage or expense caused to Project property;
  - I. The extent to which the Project as completed failed to comply with the Project as represented in the Application or in approved Project changes;
  - J. The extent to which the incident would have affected scoring of the Project Application if known as the time (although no such effect on Application scoring need be shown to justify an assignment of negative points);
  - K. The extent to which completion of a Project that received an Award of Credits was substantially delayed or prevented;
  - L. The extent to which Credits that were Awarded were recaptured;
  - M. The extent to which unreasonable or excessive fees, profits or other improper remuneration was derived improperly from a Credit Award or Project; and
  - N. The presence of any other relevant factors or considerations.
- ii. Except as otherwise provided in this Section, negative points will be assigned on the next competitive 9% Credit Application (or multiple Applications in the same competitive round) which includes as part of its Development Team any person or entity that participated as a Development Team member in the Project or Projects giving rise to the negative point assignment.
  - iii. If multiple and/or repeat instances of poor performance, management weakness or fail to respond occur or have occurred, negative points may be assigned with respect to a Development Team member for not only the first competitive round in which an Application involving such member participates but may also be assigned for such Applications in multiple future years or competitive rounds.
  - iv. If negative points are assigned as a result of poor track record, management weakness or failure to respond that occurred as part of the development/construction/rehabilitation process prior to beginning of lease-up activities or other involvement of the Qualified Management Company, negative points will not be assigned with respect to such Qualified Management Company.
  - v. If more than one Development Team member subject to a negative point assignment from a prior Project is part of the Development Team on a current or future Project Application, the total negative points assigned to the Application will be the greatest number of negative points assigned with respect to any one such participating Development Team member.
  - vi. If the Project giving rise to the negative points would have received a lower Development Evaluation Criteria score under the QAP under which the Project initially was evaluated, scored and awarded credits had the poor track record, management weakness or failure to respond been known as of Application scoring, the negative points assigned with respect to a Development Team member from the earlier Application will be the number of points corresponding to the difference in scoring that would have resulted. Such point difference shall be converted as appropriate and necessary to correspond to the current QAP point scoring system.

\* Indicates federally mandated criteria

## **E. Minimum Scoring Threshold**

Developments not scoring the minimum Development Evaluation Criteria score of 1000 points (or 800 points for non-competitive 4% Credit Bond Deals) will not receive further consideration. Applications scoring at least the minimum Development Evaluation Criteria score of 1000 points or 800 points for non-competitive 4% Credit Bond Deals and meeting all other requirements of this QAP will be considered for an Award of Housing Credits as provided in this QAP.

~~An Application or Project awarded credits must be the same Project as described and represented in the Application from the time of Application through the first 5 years of the Compliance Period, except for any changes that are not Substantial Changes or any Substantial Changes that have approved by MBOH or the MBOH Board as provided in the Applicable QAP. This includes ownership, development team members, as well as the physical property, and any Project characteristics proposed or promised in the Application (e.g., targeting, amenities, green, energy, etc).~~

## F. Award Determination Selection Standard

### 1. Selection Standard

The MBOH Board will select those Projects to receive an Award of Housing Credits that it determines best meet the most pressing affordable housing needs of low income people within the state of Montana, taking into consideration: (a) all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides, priorities and data (including without limitation the statistical data in the MBOH Statistical Data Form) set forth in this QAP and all federal requirements (together referred to in this QAP as the "Selection Criteria"); (b) the Development Evaluation Criteria scoring; and (c) all other information provided to the MBOH Board regarding the applicant Projects.

The awarding of points to Projects pursuant to the Development Evaluation Criteria is for purposes of determining that the Projects meet at least the minimum Development Evaluation Criteria required for further consideration and to assist the MBOH Board in evaluating and comparing Projects. Development Evaluation Criteria scoring is only one of several considerations taken into account by the MBOH Board and does not control the selection of Projects that will receive an Award of Housing Credits.

### 2. Additional Selection Factors

In addition to any other Selection Criteria specified in this QAP, the MBOH Board may consider the following factors in selecting Projects for an Award of Housing Credits to qualifying Projects:

- a. The geographical distribution of Housing Credit Projects;
- b. The rural or urban location of the Projects;
- c. The overall income levels targeted by the Projects (including deeper targeting of income levels);
- d. The need for affordable housing in the community, including but not limited to current Vacancy Rates;
- e. Rehabilitation of existing low-income housing stock;
- f. Sustainable energy savings initiatives;
- g. Financial and operational ability of the Applicant to fund, complete and maintain the Project through the Extended Use Period;
- h. Past performance of an Applicant in initiating and completing tax credit Projects;
- i. Cost of construction, land and utilities, including but not limited to costs/credits per square foot/unit;
- j. The Project is being developed in or near a historic downtown neighborhood; ~~and/or~~
- k. ~~The frequency of Awards in the respective areas where Projects are located-; and/or~~
- l. Preserving project rental assistance or have or are planning to add Section 811 units to an existing project.

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If the MBOH Board Awards Credits to an Applicant where the Award is not in keeping with the Selection Criteria of this QAP, it will publish a written explanation that will be made available to the general public pursuant to Section 42(m)(1)(A)(iv) of the Internal Revenue Code.

If all of the authorized Credits are Awarded after a particular cycle, MBOH may place qualifying Applications which did not receive an Award of tax credits on a waiting list for potential Award of Housing Credits in the event Credits become available at a later date.

Any available Credits that are not Awarded or reserved in a particular cycle may in the discretion of the MBOH Board be made available for Award in a future cycle or may be used to increase the amount of Housing Credits reserved for a previously Awarded Project as provided in this QAP.

## **SECTION 10 – RESERVATION, CARRYOVER, CREDIT REFRESH AND FINAL ALLOCATION**

~~Once MBOH has selected Projects and determined the Award of Housing Credits and amount of Credits to be reserved, MBOH will provide a Reservation Agreement, Gross Rent Floor Election, and Declaration of Restrictive Covenants to the partnership for execution and return to MBOH. Upon recording, the original recorded Restrictive Covenants must be returned promptly to MBOH. The following requirements in this Section 10 apply to all Projects Awarded Credits. This Section specifies the requirements for~~ Reservation Agreement, Gross Rent Floor Election, Declaration of Restrictive Covenants, Carryover Commitment, 10% Test, Credit Refresh, Placed in Service and Final Allocations/8609.

### **A. Reservation Agreement & Gross Rent Floor Election**

~~After an Award of Credits, MBOH will provide a Reservation Agreement, and Gross Rent Floor Election, and Declaration of Restrictive Covenants to the partnership Owner for execution and return to MBOH. The partnership Owner should must review, complete, sign, and return the Reservation Agreement and, Gross Rent Floor Election, along with the additional information and materials required below in accordance with the requirements of this subsection.~~

~~MBOH will send the successful Applicant a Reservation Agreement shortly after Award and upon meeting the foregoing requirements. The Gross Rent Floor Election reflects the Owner's election of the date when the Project's gross rent floor will be established, either at the date of the Reservation/Initial Allocation or at the date the Project is Placed in Service. The Gross Rent Floor Election form must be returned with the executed Reservation Agreement.~~

~~If the Owner elects the federal percentage(s) in the month that the Reservation (Initial Allocation) is issued by MBOH, the Reservation Agreement and Gross Rent Floor Election must be completed, signed and returned on or before the 25<sup>th</sup> of that month to assure the lock-in of the rate. If the Owner elects the placed-in-service date, the Reservation Agreement and Gross Rent Floor Election must be completed, signed and returned no later than The Applicant will have a maximum of 120 days after Award. to accept, sign and return the Reservation Agreement. Failure to return the Agreement by the deadline will result in a late fee as listed on the Fee Schedule. Where applicable, however, if the Owner elects the federal percentage(s) in the month that the Reservation (Initial Allocation) is issued by MBOH, the Reservation Agreement must be signed and returned on or before the 25<sup>th</sup> of that month to assure the lock-in of the rate. Owners electing the placed-in-service date should return the signed Reservation Agreement immediately. Upon receipt, MBOH will sign the Reservation Agreement, and return a copy to the partnership. Failure to return the Agreement and Election by the deadline will result in a late fee as listed on the Fee Schedule.~~



The Reservation Fee specified in Fee Schedule will be due and must be received by MBOH on or before the date specified in the Fee Schedule.

A Reservation Agreement is MBOH's conditional commitment to make a Carryover Commitment and/or Final Allocation to the Project, subject to the requirements and conditions of the Reservation Agreement, the QAP and federal law. Such requirements include but are not limited to submission of evidence of timely progress toward completion of the development acceptable to MBOH and compliance with federal tax credit requirements. The election on this form verifies when the Owner elects the gross rent floor for the Project. There are two options: at the Reservation/Initial Allocation, or at the date Placed in Service. This form reflects the election made by the Owner in the Reservation Agreement. This form must be returned with the executed Reservation Agreement.

~~If an unsuccessful Applicant, or a party associated with such Applicant, commences any legal action or proceeding challenging MBOH's Award determination or process, MBOH will make a Carryover Commitment or Final Allocation of Housing Credits as required by an executed Reservation Agreement to the same extent it would have been bound to do in absence of the legal challenge, unless the court determines that such Applicant was not eligible or qualified under the applicable QAP to receive an Award of Housing Credits or MBOH otherwise determines that it is precluded by Court order from doing so. If a court determines in any such action or proceeding that MBOH must Award Credits to one or more unsuccessful Applicants from such round or year, such Award or Awards will be made using any available returned or unreserved Housing Credits or current year's Credits as provided in Section 7.~~

~~MBOH will send the successful Applicant a Reservation Agreement shortly after Award and upon meeting the foregoing requirements. The Applicant will have a maximum of 120 days after award to accept, sign and return the Reservation Agreement. **Failure to return the Agreement by the deadline will result in a late fee as listed on the Fee Schedule.** Where applicable, however, if the Owner elects the federal percentage(s) in the month that the Reservation (Initial Allocation) is issued by MBOH, the Reservation Agreement must be signed and returned on or before the 25<sup>th</sup> of that month to assure the lock-in of the rate. Owners electing the placed in service date should return the signed Reservation Agreement immediately. Upon receipt, MBOH will sign the Reservation Agreement, and return a copy to the partnership.~~

~~The Reservation Fee specified in Fee Schedule will be due and must be received by MBOH on or before the date specified in the Fee Schedule.~~

Once the partnership-Owner enters into a Reservation Agreement with MBOH, the partnership-Owner must then meet the requirements and conditions described in the Reservation Agreement and provide the required documentation before it receives a Carryover Commitment or Final Allocation of Housing Credits.

MBOH will revoke an approved Reservation (Initial Allocation) and terminate the Reservation Agreement when a Project fails to make successful progress toward completion or otherwise fails to perform its obligations under the Reservation Agreement. Submitting quarterly status reports demonstrating satisfactory evidence of the Project's completion is the responsibility of the OwnerApplicant. Successful progress toward Project completion and Project completion require that such progress and completion are in substantial accordance with the Project as described and proposed in the Project Application on the Implementation Schedule, except to the extent that Substantial Changes (more than a 60 day delay) have been approved by MBOH or the MBOH Board as provided in the Applicable QAP.

NOTE: Reservation Agreements for tax credit Projects funded through tax-exempt bonds must be completed, signed, and returned to MBOH not later than five business days following the close of the bond financing agreement.

If an unsuccessful Applicant, or a party associated with such Applicant, commences any legal action or proceeding challenging MBOH's Award determination or process, MBOH will make a Carryover Commitment or Final Allocation of Housing Credits as required by an executed Reservation Agreement to the same extent it would have been bound to do in absence of the legal challenge, unless the court determines that such Applicant was not eligible or qualified under the applicable QAP to receive an Award of Housing Credits or MBOH otherwise determines that it is precluded by Court order from doing so. If a court determines in any such action or proceeding that MBOH must Award Credits to one or more unsuccessful Applicants from such round or year, such Award or Awards will be made using any available returned or unreserved Housing Credits or current year's Credits as provided in Section 7.

## **B- Gross Rent Floor Election**

~~The election on this form verifies when the Owner elects the gross rent floor for the Project. There are two options: at the Reservation/Initial Allocation, or at the date Placed in Service. This form reflects the election made by the Owner in the Reservation Agreement. This form must be returned with the executed Reservation Agreement.~~

## **C.B. Declaration of Restrictive Covenants**

To be eligible for HCs, a building must be subject to an extended low income housing commitment between the Owner and MBOH, which commitment must be established by a recorded Declaration of Restrictive Covenants (Restrictive Covenants) effective for the full Extended Use Period. The Owner must meet compliance criteria for the full Extended Use Period specified in the Restrictive Covenants. Through execution and recording of the ~~Declaration of~~ Restrictive Covenants with respect to Housing Credits, all Owners waive and forfeit the right to request that MBOH locate a non-profit qualified buyer (the "qualified contract process") and the Owner must maintain HC units through the Extended Use Period as provided in the Restrictive Covenants. The Extended Use Period specified in the ~~Declaration of~~ Restrictive Covenants may not be terminated early through the qualified contract process.

The ~~Declaration of~~ Restrictive Covenants ~~assures-assure~~ that the land and its use will be restricted for the purposes of providing low-income housing for the period proposed in the Application. Provisions included in the Restrictive Covenants will include Exhibit A-1 (Legal Description of Project Land); Exhibit A-2 (Conditions of Tax Credit Allocation) indicating the number of units at the appropriate elected income and rent levels, e.g., 30%, 40%, 50%, 60% AMI as determined by the Application (Owners will be required to maintain those income and rent levels through the Extended Use Period of the Project); Exhibit A-3 (Energy and Green Building) indicating the architect's letter provided in the Application outlining those energy and green building initiatives; Exhibit A-4 (Amenities); Exhibit A-5 (Participation by Local Entity); and Exhibit A-6 (Special Housing Needs).

When submitted to MBOH, the executed and recorded Restrictive Covenants must be accompanied by a copy of the most current ALTA survey and title commitment for the Project real property. Prior of issuance of 8609, documentation must be submitted evidencing the first priority position recording priority of the Restrictive Covenants. If such evidence the title commitment does not show that the Restrictive Covenants are in a first priority position, MBOH will require a subordination agreement from the owner or holder of any prior-recorded lien or encumbrance as a condition of issuance of IRS Form 8609, unless such prior lien or encumbrance is required by a federal agency to have priority over the Restrictive Covenants or MBOH otherwise determines in writing that subordination is not required (e.g., where such lien or encumbrance would not preclude operation of the property as low-income housing in accordance with the Restrictive Covenants or preclude enforcement of the Restrictive Covenants).

**Commented [A28]:** Language added in response to comment.

**Commented [A29]:** Public Comment: Homework

**Commented [A30]:** Language added in response to comment.

**Commented [A31]:** Language revised in response to comment.

**Submission of the executed and recorded Restrictive Covenants and related additional documents specified in the preceding paragraph is required as a condition of MBOH issuance of a Carryover Commitment. It is the Developer's responsibility to record the Declaration of Restrictive Covenants in the county in which the Project real property is located. Upon recording, the original recorded Restrictive Covenants must be returned promptly to MBOH not later than the deadline specified in Section D, Carryover Commitment together with the related documents must be submitted to MBOH by December 1 of the year for which the Award of Credits was made, except as provided in subsection C below.**

**In unusual circumstances, and for good cause shown, MBOH may permit amendments to the Declaration of Restrictive Covenants at a subsequent date.**

### **D.C. Carryover Commitment**

MBOH will issue a Carryover Commitment in December of the year for which the credits are being Awarded and such Carryover will be for a period of two (2) calendar years. To preserve this commitment the Owner/Developer must submit the 10% Cost Certification by the deadline specified ~~in the Applicable QAP~~ subsection D below.

In order to receive a Carryover Commitment, Owners must provide the executed Reservation Agreement and Gross Rent Floor, Proof of Ownership (evidence of title or right to possession and use of the property for the duration of the Compliance Period and any Extended Use Period plus one year, e.g., a recorded deed or an executed lease agreement), executed and recorded Restrictive Covenants, and the Reservation fee. Land lease periods must be at least one year longer than the Restrictive Covenant period. ~~When submitted to MBOH, the executed and recorded Restrictive Covenants must be accompanied by a copy of the ALTA survey and title commitment for the Project real property evidencing the recording priority of the Restrictive Covenants. If the title commitment does not show that the Restrictive Covenants are in a first priority position, MBOH will require a subordination agreement from the owner or holder of any prior recorded lien or encumbrance as a condition of issuance of IRS Form 8609, unless such prior lien or encumbrance is required by a federal agency to have priority over the Restrictive Covenants or MBOH otherwise determines in writing that subordination is not required (e.g., where such lien or encumbrance would not preclude operation of the property as low income housing in accordance with the Restrictive Covenants or preclude enforcement of the Restrictive Covenants).~~

These items must be received by December 1, of the year for which the Award of Credits was made. MBOH will issue Carryover Commitments before year end. MBOH staff may grant one or more reasonable extensions of the December 1 deadline for any of the required items upon written request of the Owner/Developer documenting good cause for such extension.

### **E.D. 10% Test**

Section 42 requires that more than 10% of the expected basis in a Project, including land, must be expended by the 10% Cost Certification deadline. MBOH requires that Developers provide an independent third-party CPA audit report, in a format and meeting the requirements established by MBOH, verifying compliance with the 10% test.

Developers must submit the 10% requirements, including the required CPA audit report, other documents and the 10% test underwriting fee by the deadline. Failure to do so will result in the loss of the Credit Award. See Fee Schedule for fees.

**Because MBOH's submission deadline is set at the latest date allowed by federal law, no extensions will be granted. If 10% test information is submitted by the deadline but any forms are incomplete or omitted, a correction fee will be imposed for each incomplete or omitted item.**

At 10% Test, MBOH staff will re-evaluate:

1. The Sources and Uses of funds;
2. Total financing planned for the Project;
3. Proceeds or receipts expected to be generated by the Housing Credits;
4. Reasonableness of the development and operation costs;
5. Projected Rental Income and Operational Expenses;
6. Debt Coverage Ratio;
7. Cost Limitations; and
8. Housing Credits required for financial feasibility of the Project.

Deadline for submission of the required 10% information is the first anniversary of the date on which MBOH executed the Reservation Agreement. ~~This submission deadline will apply to 10% test submissions for Projects awarded Housing Credits in the 2016 or later year allocation rounds.~~ Developers that fail to pay the required fee will be deemed not to have met the 10% Test requirements. Failure to submit certification for 10% documentation or to meet the 10% Test will cause forfeiture of Awarded, reserved or allocated Housing Credits for the Project.

### **F.E. Refreshing Credits**

The MBOH Board may in its sole discretion approve a Credit Refresh for Projects that have been issued a Carryover Commitment by MBOH as provided in Subsection D, above, and that have submitted all required 10% Cost Certification materials and fees, and for which MBOH has approved such 10% Cost Certification, as provided in Subsection E, above.

The amount of Credits reserved through a Credit Refresh shall not exceed: (i) the amount of Credits originally allocated by MBOH for the Project; or (ii) the amount of the maximum Credit Award specified in the Qualified Allocation Plan under which the Credits were originally allocated.

To obtain a Credit Refresh, the Owner must submit a Credit Refresh application to MBOH in the form and according to the requirements provided by staff, along with the Credit Refresh fee as specified in the Fee Schedule. Upon receipt of a complying Credit Refresh Application Form and completion of staff evaluation of such application, the application will be placed on the agenda for consideration at the next MBOH Board meeting. The Owner or its representative should appear at the meeting to answer Board questions, if any, regarding the application and the factors leading to the submission of the application.

The MBOH Board may approve or deny the Credit Refresh, or may defer action on the application pending additional information or compliance with specified conditions. The Board may place any one or more conditions on approval or further consideration of an application.

In considering and making its determination regarding an application, the Board may consider any or all of the following:

1. The diligence, or lack of diligence, by the Development Team, Owner or other Project participant in seeking to complete the development, approval, construction and opening of the Project;
2. Any factors beyond the control of the Development Team, Owner or other Project participant, significantly contributing to the need for the Credit Refresh;
3. The likelihood that the Project will be completed and Placed in Service within a reasonable time, under the circumstances, if the Credit Refresh is approved;
4. The likelihood that the Project will not be completed or Placed in Service if the Credit Refresh is denied;
5. The need for the Project, as determined in the original Application and Award processes;

6. Any significant changes in market conditions or other factors that affect the financial feasibility of or need for the Project; and
7. Any other factor or factors that the Board deems relevant to the determination

Upon approval of an application, the Owner shall return the Credits according to the instructions of MBOH staff and staff shall promptly provide for the re-Reservation of the Credits, as refreshed, to the Owner by providing a Reservation Agreement in accordance with Subsection A, above.

In addition to payment of any applicable fees, the Owner will be required to reimburse MBOH for legal fees and expenses incurred by MBOH in connection with the Credit Refresh Application in accordance with the Applicable QAP.

All requirements of the Applicable QAP and applicable law shall apply to such Reservation and Credits as if such Reservation were the original Reservation of Credits for the Project, including without limitation, Gross Rent Floor Election, Declaration of Restrictive Covenants, Carryover, 10% Test, Placed on Service and Final Allocations/8609 and payment of the Reservation fee and all other applicable fees; provided, that no further submission of executed and recorded Restrictive Covenants, or related survey or title commitment, shall be required if previously submitted in accordance with Applicable QAP requirements, but amendment of such covenants will be required as necessary to conform the covenants to the refreshed credits or to comply with any additional or different requirements in the Applicable QAP.

#### **G.F. Placed in Service**

Placed in Service is defined in Section 1 of this QAP. New Construction and Gut Rehabilitation buildings must be Placed in Service not later than the close of the second calendar year following the calendar year in which the Carryover Commitment is made.

Other Rehabs that are accomplished with residents in place during Rehab can be Placed in Service at the end of the 24 month or shorter period over which the required amount of expenditures are aggregated, as provided in the definition of Placed in Service in Section 1 of this QAP.

#### **H.G. Final Allocations/8609**

Documentation supporting a request for issuance of IRS Form 8609(s) must be submitted to MBOH within 6 months of the last building Placed in Service date. MBOH will not allocate tax credits on IRS Form 8609(s) until a qualified building is Placed in Service. A site visit and file audit by MBOH may be conducted prior to the issuance of the IRS Form 8609(s). Notwithstanding other provisions of this QAP, to obtain issuance of IRS Form 8609(s), the Project must be Placed in Service in substantial accordance with the Project as described and proposed in the Project Application, except to the extent that Substantial Changes have been approved by MBOH or the MBOH Board as provided in the Applicable QAP.

The Final Allocation/8609 underwriting fee must be paid at the time of submission of the request for issuance of IRS Form 8609(s). If the paperwork is not received by MBOH within 6 months of the last building Placed in Service date, a late fee will be assessed. **If 8609 information is submitted by the deadline but any forms are incomplete or omitted, a correction fee will be imposed for each incomplete or omitted item. If a draft 8609 is sent to Developer for review and 8609s must be redone because of Developer/Accountant error, there will be a fee for additional underwriting. See Fee Schedule for fees.**

The request for issuance of IRS Form 8609(s) must include:

1. Certification of required infrared test results (if not previously submitted);

2. The independent third party completed MBOH CPA's audit report and Owner's Statement Forms;
3. Sponsor Certification [section of the UniAppForm](#);
4. The architect's verification that the items for green and amenities listed in the Application as well as provisions of accessibility listed in Section 3 have been incorporated;
5. Certificates of Occupancy (C of O's), if applicable;
6. Copies of all permanent loan [notes](#) and/or grant [contracts documents](#);
7. Copy of partnership/operating agreement;
8. Detailed list of items or costs excluded from eligible basis (for example, parking lot is not in eligible basis);
9. Statement identifying the first year of the credit period, which statement must name the specific year (e.g., 2017);
10. The Final Allocation/8609 underwriting fee; and
11. Documentation evidencing that the site manager and Management Company personnel have completed a Nationally-Recognized LIHTC Compliance Training Company certification course, passing the test; and have attended a class with a Nationally-Recognized LIHTC Compliance Training Company in the last four years.

If the required fee is not submitted, the Project will be deemed not to have met Final Allocation requirements and MBOH will not issue IRS Form 8609(s). MBOH will complete the final credit Allocation evaluation. Typical turn-around time for 8609(s) is 4-8 weeks after submission of all required documentation and the fee. Once the 8609(s) are issued and delivered to the Owner, the bottom half must be completed and signed.

**A copy of each completed and signed 8609 must be sent back to MBOH within ~~90~~ [3 months](#) of issuance. Failure to provide the completed and signed 8609(s) so that they are received by MBOH by the deadline will result in a late fee. If the 8609(s) need to be reissued after completed by MBOH due to Developer error, the MBOH underwriting fee must be paid again. See Fee Schedule.**

## **SECTION 11 - DEVELOPER/APPLICANT RESPONSIBILITIES**

Applicant must respond to a written MBOH request (including but not limited to any email request) within 10 working days. Failure to do so may result in the Application being deemed ineligible for that funding round.

Applicant must proceed according to the timeframe identified in the Implementation Schedule. Adjustments of up to 60 days are acceptable. Any changes in the Implementation Schedule greater than 60 days must be submitted in writing with justification to MBOH within 10 business days of the change. Any changes not reported or not approved may jeopardize the credits. If the schedule is more than 60 days behind and has not been updated as stated above, a late fee will be assessed. See Fee Schedule.

### **A. State Law Requirements**

The Applicant and Development Team must agree to comply with Montana State law requirements (e.g., certificate of contractor registration, workers compensation, unemployment compensation, and payroll taxes).

### **B. Public Notification**

Any public relations actions by a recipient of tax credits involving MBOH funds or tax credits must specifically state that a portion of the funding is from MBOH. This will be included in radio, television, and printed advertisements (excluding rental ads), public notices, and on signs at construction sites, e.g., "Housing Credits allocated by ~~the~~ Montana [Board of Housing](#), Montana Department of Commerce."

## C. Quarterly Reporting

### Status Reports

All Applicants receiving Reservations (Initial Allocations) of credits must provide written status reports for each calendar quarter, beginning with the quarter in which the tax credit Award is made. Status reports will be due on or before January 10<sup>th</sup>, April 10<sup>th</sup>, July 10<sup>th</sup> & October 10<sup>th</sup> until the Applicant receives its 8609(s). The documentation regarding the progress must be development specific, and include such items as planning approval and building permits, firm debt and/or equity financing commitments, construction progress (foundation, framing, rough in, enclosed, drywall, etc., **for each Project building**), and lease up progress. Submission of photos is encouraged.

The following items must be addressed for **each building** on the quarterly report that is submitted to MBOH. If all items are not addressed, the report will be returned and must be corrected and resubmitted. If the resubmitted report is received after the due date the late fee will apply.

1. Updated implementation schedule if more than 60 days behind schedule submitted with application;
2. Advertising for construction bids;
3. Construction bid awards;
4. Pre-construction meeting date;
5. Groundbreaking ceremony date (at least 2 weeks' notice);
6. Future dates of construction/draw meetings;
7. Each phase of construction for **each building including photos** (excavation, foundation framed, etc.);
8. Certificate of Occupancy for **each building** issued in that quarter;
9. During lease up the number of units occupied and number left to full lease up each quarter; and
10. Grand Opening date (at least 2 weeks' notice).

**Owners must provide a copy of the Certificate of Occupancy for each building. The Certificate of Occupancy must be included in the status report covering the period in which it was issued. Failure to provide the reports so that they are received by MBOH by the deadline will result in a late fee. See Fee Schedule.**

### ARRA Reporting

All ARRA reports are due on or before the dates listed in the ARRA Exchange or TCAP Program Agreement.

**Late fees will be assessed for each of the following:**

1. **the financial audit is not received by MBOH by the deadline;**
2. **the annual budget is not received by MBOH by the deadline; or**
3. **the annual insurance binder is not received by MBOH by the deadline.**

**See Fee Schedule for all above fees.**

## D. Changes to Project or Application

The Applicant must notify MBOH in writing at least 30 days before any proposed Substantial Changes in the Project. Proposed Substantial Changes to the Project must be approved by MBOH.

Specific approval by MBOH is required for Substantial Changes. MBOH staff will review requested Substantial Changes and may approve or deny approval of such changes, or may

request Board consideration and determination of the change request. If MBOH staff denies approval of any Project Change, the Applicant may request Board review and approval of the change request. Requests must be submitted to MBOH with proper justification at least 30 days before the change is expected to take place. The Applicant must inform MBOH staff if the proposed change requires immediate or urgent review and approval. MBOH review and approval of changes must be completed prior to the change taking effect. Changes completed without MBOH approval may result in the termination of the Reservation Agreement and/or loss of some or all credits.

Any requested changes submitted requiring MBOH action may incur additional fees. Changes to the Project site, construction of building(s), architectural, engineering, or any on-site review by any member of MBOH will incur additional charges. Fees will be determined based upon the cost of MBOH Staff travel for that purpose.

## **SECTION 12 - COMPLIANCE MONITORING**

Federal law requires state allocating agencies (MBOH) to monitor compliance with provisions of Section 42 of the Internal Revenue Code (26 U.S.C. § 42). In addition, Federal law requires allocating agencies to provide a procedure the agency will follow in monitoring for non-compliance and to inform tax credit recipients (Owners) of procedures and requirements. The Project must comply with the Housing Credit requirements set forth in Section 42 and this QAP for the entire Extended Use Period. Periodic file audits and inspection of units will be performed by MBOH staff as provided in this QAP.

Included in the requirements are procedures for notifying the Internal Revenue Service (IRS) of any non-compliance of which the allocating agency becomes aware. Federal income tax regulations related to Procedures for Monitoring Compliance with Housing Credit Requirements are published in 26 CFR Part 1 and 602.

For complete HC compliance guidance, refer to the MBOH HC Compliance Manual, available at <http://housing.mt.gov/MFCompManual>

### **A. Compliance Fees** (See Fee Schedule for all fees mentioned below)

Developments will incur and must pay to MBOH a compliance monitoring fee to offset the costs for MBOH compliance monitoring. The compliance monitoring fee is payable annually at the time of the Owner's Submission of the Owner's Certificate of Continuing Program Compliance for the time period being submitted.

**A late fee will be assessed if the complete Annual Compliance Package is not received by the deadline.**

Failure to provide corrections on noncompliance so that they are received by the deadline set by MBOH will result in an initial late fee and an additional per-week fee until all required documentation is received by MBOH. A one-time extension may be granted if a written request is submitted to MBOH no later than 10 days prior to the deadline. If an extension is granted and the extension deadline passes without MBOH receipt of the complete documentation, a per-week fee will be imposed until all required documentation is received by MBOH.

The following procedure describes MBOH plans for monitoring compliance on Housing Credit Projects. At minimum, each Project that has been Placed in Service will be subject to the following monitoring requirements:

### **B. Recordkeeping, Record Retention and Data Collection**

#### **1. Recordkeeping**



The Owner of a low-income housing Project must keep records for each building in the Project that shows unit qualifications for each year throughout the term of the Declaration of Restricted Covenants, including the Compliance Period and the Extended Use Period in effect for such Project.

The information must show for each year in the Compliance Period:

- a. The total number of residential rental units in a building (including the number of bedrooms and the size in square feet of each residential rental unit);
- b. The percentage of residential rental units in the building that are qualified units;
- c. The rent charged on each residential rental unit in the building (including any utility allowances and mandatory fees);
- d. HC unit vacancies in the building and information that shows when, and to whom, the next available units were rented. If a unit is left vacant, or in a mixed use Project is rented to a non-qualifying tenant, the Owner must maintain documentation showing a diligent attempt was made to rent the unit to a qualifying tenant;
- e. The tenant income certification of each HC tenant (by unit), including annual certifications for each continuous tenant;
- f. Documentation to support each HC tenant's income certification. This must include a copy of verification(s) of income
- g. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- h. The character and use of any non-residential portion of the building included in the eligible basis of the building, if applicable.

## **2. Records Retention**

Federal regulations require the Owner of a HC Project receiving tax credits to retain the records listed above. The Owner is required to retain such records for at least 6 years after the due date for filing the federal income tax return for that year. Records for the first year of the credit period must be retained for at least 6 years beyond the due date for filing the federal income tax return for the last year of the Compliance Period. Owner should also retain records relating to the amount of credit claimed for the MBOH Tax Credit, including the IRS Form 8609(s) and Schedule A of IRS Form 8609(s).

## **3. Data Collection**

To the extent required by federal law, the Owner will assist the MBOH with meeting federal reporting requirements by collecting and submitting information annually concerning the 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 of all qualified households.

## **C. Owners Certificate of Continuing Program Compliance**

The Owners Certificate of Continuing Program Compliance is required on an annual basis for each property. The certificate must be signed by the Owner and notarized. This statement must be filed with MBOH every year throughout the Extended Use Period. Owners must file annual certifications on the Form provided by MBOH. Substitute forms are not acceptable. Failure to provide an annual certification before the date established by MBOH may trigger an IRS Form 8823.

## **D. Income and Expense Summary**

All property Owners must submit operating income and cost information for the property's latest fiscal period, including a current balance of replacement and operating reserve accounts.

### **E. Submission Deadlines**

The Owners Certificate of Continuing Program Compliance and Tenant Income Certifications (TIC) must be submitted on or before the 25th of the month following the assigned annual period. Federal regulations stipulate there must be no more than 12 months between certifications.

All submissions must be filed through Certification On Line (COL).

### **F. Review by MBOH Staff**

MBOH will review the items listed above for compliance with the requirements of Section 42 of the Code and with the requirements of the MBOH HC program.

### **G. Ownership/Management Changes**

Written Notification of changes to property management companies, managers, site managers, or changes to points of contact must be submitted to MBOH prior to or immediately upon implementation of the change. Changes not received by MBOH prior to change or immediately upon change, or within a 15-day grace period thereafter, will result in an initial late fee and monthly late fees thereafter until written notification is received. If no notification is received MBOH will research and identify the date of the change, and impose late fees based upon such date (and allowing for a 15-day grace period). No Change in Management Company shall be acceptable unless it results in a Qualified Management Company assuming management of the property. Replacement of a Management Company with a company that is not a Qualified Management Company or failure to timely submit such notification to MBOH may trigger issuance of a IRS Form 8823. All management companies, whether in place or being hired, must meet Qualified Management definition.

Subject to the requirements of Section 42 of the Code, the Restrictive Covenants and the Applicable QAP and any other applicable restrictions, the Owner may sell, transfer or exchange the entire Project at any time. No portion of a building to which the Restrictive Covenants apply may be sold to any person/entity unless all of such building is sold to such person/entity. Prior to such sale, transfer or exchange, however, the Owner must notify in writing and obtain the written agreement of any buyer, successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of the Restrictive Covenants, the requirements of Section 42 of the Code and applicable Regulations, and the Applicable QAP. Such written agreement of the buyer, successor or other person acquiring the Project must be in the form required by MBOH, which agreement form is available on the MBOH website. Such form, executed by the buyer, successor or other person acquiring the Project must be submitted to MBOH prior to closing of the sale, transfer or exchange. The Board may void any sale, transfer or exchange of the Project if the buyer, successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.

### **H. Education Requirements**

Persons responsible for [providing or explaining information for tenant qualification or](#) qualifying tenants and verifying compliance (involved in tenant qualification and compliance) must be certified in LIHTC compliance by one of the Nationally-Recognized LIHTC Compliance Training Companies within the time specified in this section. Property managers and property Management Company personnel must complete a Nationally-Recognized LIHTC Compliance Training Company certification course,

passing the test. Once certification has been obtained, to maintain certification for MBOH purposes, the person must attend a class with a Nationally-Recognized LIHTC Compliance Training Company at least once every four years. For each of the other three years, all property managers and property Management Company personnel should attend annual MBOH compliance training. The property Management Company and site manager for an HC property must be trained and certified before the property is Placed in Service. New site managers hired for existing HC properties must be certified within their first 6 months of employment. New property management companies hired for existing properties must be certified per the above requirements before they assume management of a property. Training requirements must be met to maintain Qualified Management Company status.

Persons responsible for qualifying tenants and verifying compliance (involved in tenant qualification and compliance) must also attend Fair Housing training at least once every four years. The manager for a HC property must complete such training before the property is Placed in Service.

Such Fair Housing training must include and cover the following subjects and requirements:

1. Protected Classes;
2. Accessibility requirements;
3. Reasonable accommodation/modification;
4. Applicant screening;
5. Disparate impact;
6. Domestic violence issues;
7. Occupancy standards;
8. Section 504; and
9. Service Animals.

In the event a Management Company fails to meet the certification or training requirements in this Subsection H, MBOH will notify the Management Company and the Owner of such noncompliance and the date by which such noncompliance must be corrected. If such noncompliance is not corrected by such date, the Owner will be required to pay the applicable fees specified in the Fee Schedule for each week that such noncompliance remains uncorrected.

## **I. Tenant Income Certifications (TIC)**

### **1. Frequency and Form**

Owners must complete the MBOH TIC *for all new move-ins* and file it with MBOH through Certification On Line (COL). Documentation supporting the TIC will not be submitted. MBOH staff will review supporting documentation during file audits. Timely annual Re-certifications (TICs) *for mixed Projects* (with market units) are required must be submitted to MBOH through COL.

The MBOH COL TIC must be used. Any other TIC must be preapproved by MBOH prior to use.

## **J. Student Status Certification**

Student status certifications must be completed *annually* (may be completed on a TIC and marked other-student certification) within the 30 day period *prior to their move-in anniversary date*.

## **K. On-Site Inspections**

MBOH staff (staff) will perform an on-site inspection of each property at least once every three years during the Extended Use Period. Staff will notify the Owner/manager in advance of the inspection.

Staff must inspect and review at least 20% of the tenant files and corresponding units. MBOH will not notify the Project's manager, Owner or other representative of the unit selection before the site inspection. The selected sample may be expanded.

Complete copies of all tenant files for each unit from original lease-up forward must remain within the State of Montana at the location of the rental property or the regional in-state office.

If MBOH determines it is necessary, properties may be inspected on a cycle of more than once every three years. The cost of any additional inspections will be billed to the respective property.

MBOH may schedule on-site inspections at any time with minimal notice.

In event of non-compliance under Section 42 of the Code or the implementing regulations MBOH may be required or elect to undertake additional monitoring. The Owner will take any and all actions reasonably necessary to achieve and maintain compliance. Staff may require the Owner to document correction of non-compliance and/or MBOH may elect to conduct one or more site visit(s) to verify correction of non-compliance and/or require additional Owner or manager training. The Owner will pay a reasonable fee to MBOH for any such additional monitoring activities.

#### **L. Notice to Owner (26 CFR 1.42 (e)(2))**

MBOH must provide prompt written notice to the Owner if MBOH becomes aware of non-compliance. These items include:

- Non-receipt of the certification(s) described in this QAP.
- Inaccessibility of tenant income supporting documentation, rent records, or the property.

In addition, MBOH must provide prompt written notice to the Owner if MBOH discovers by inspection, review, or in some other manner, that the Project is not in compliance with the provisions of Section 42.

#### **M. Correction Period (26 CFR 1.42 (e)(4))**

The Owner will be given a reasonable correction period from the date of non-compliance. If Staff determines that good cause exists, an extension may be granted.

#### **N. Notice to IRS (26 CFR 1.42 (e)(3))**

MBOH must file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance" with the IRS (even if non-compliance has been corrected) no later than 45 days after the end of the correction period, and no earlier than the end of the correction period.

#### **O. Liability (26 CFR 1.42 (g))**

Compliance with the requirements of Section 42 is the responsibility of the Owner of the building for which the credit is allowable. MBOH's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an Owner's noncompliance.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relation to, the compliance monitoring of a low-income housing Project.

### **P. Marketing the Project**

The Owner must put all HC properties into the free State-approved Housing Locator website, MTHousingSearch.com within one year after Placed in Service. If not completed within such time period, MBOH will do so and charge the Owner for the related costs. Properties will be contacted by MTHousingSearch for required information. Using this website meets the criteria for advertising vacant units and provides for broad coverage to those searching for affordable housing in Montana. The Owner must keep the listing active through the Extended Use Period.

### **Q. Qualified Contract Process**

Federal law, in Section 42 of the Code, provides for a state housing credit agency process for early termination of the Extended Use Period for certain Projects and subject to certain requirements. Such process provides for the early termination of the Extended Use Period: (1) if the Owner submits a written request to MBOH in accordance with certain requirements to find a person to acquire the Property, and (2) if MBOH is unable to present within a one-year period a qualified contract for the acquisition of the Property by any person who will continue to operate the low-income portion of the building as a low-income building as defined in Section 42 of the Code. MBOH has adopted certain requirements and procedures applicable to the qualified contract process. These requirements and procedures are set forth in a separate Montana Board of Housing publication entitled Montana Housing Tax Credit Program, Qualified Contract Process and Instructions for Calculation of the Qualified Contract Price (March 2017). MBOH hereby adopts and incorporates herein by reference the Montana Board of Housing, Montana Housing Tax Credit Program, Qualified Contract Process and Instructions for Calculation of the Qualified Contract Price (March 2017) (the "Qualified Contract Process" or "QCP"). The QCP governs eligibility, submission, consideration, determination and other aspects of a request for a qualified contract as provided in Section 42.

MBOH may update and revise the QCP from time to time through the administrative rule adoption process. Any updated or revised version of the QCP adopted as rule will replace and supersede the March 2017 version of the QCP as provided in the adopted rule. The current version of the QCP is available on the MBOH website at [\[insert URL\]](#).

## **SECTION 13 – DISCLAIMER**

MBOH is charged with allocating no more tax credits to any given development than is required to make that development economically feasible. This decision shall be made solely at the discretion of MBOH, but in no way represents or warrants to any Applicant, Investor, lender, or others that the development is feasible or viable.

MBOH reviews documents submitted in connection with this Allocation for its own purposes. In Allocation of the tax credits, MBOH makes no representations to the Owner or anyone else regarding adherence to the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing Montana Housing Tax Credits.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relations to, the Allocation of the Housing Credit.

If it is determined that an Applicant or any member of the Development Team has intentionally submitted false information, a credit Award may be withdrawn or credits may be recaptured and the Applicant or any Applicant involving any related parties or any

individual or entity supplying the false information will be ineligible to apply for credits for the next five years or may be assessed negative points as provided in Section 9.

**A. MBOH Policy on Non-Discrimination**

Montana Board of Housing is an Equal Opportunity organization. All employees who work for MBOH, agree not to discriminate against any client or co-worker based on any protected class under applicable Federal or Montana law. The failure of any employee to comply with this policy may lead to disciplinary action in accordance with applicable employment policies and procedures, including but not limited to immediate termination of employment.

**B. Qualified Allocation Plan Revisions**

This QAP may be amended at any time after compliance with applicable notice, comment and approval requirements.

**C. MBOH Policy on Civil Rights Compliance**

The Owner, Developer, borrowers and any of their employees, agents, or sub-contractors, in doing business with the Montana Board of Housing understand and agree that it is the responsibility of the Owner(s) and such other persons and entities to comply with all applicable Federal Civil Rights laws and regulations, including without limitation applicable provisions of the Fair Housing Laws and Americans With Disabilities Act, and any applicable State and local Civil Rights Laws and regulations. Should requirements, such as design, not be specified by MBOH, it is nonetheless the Owner(s) responsibility to be aware of and comply with all applicable non-discrimination provisions related to any protected class under Federal or Montana law, including design requirements for construction or Rehabilitation, Equal Opportunity in regard to marketing and tenant selection and reasonable accommodation and modification for those tenants covered under the Laws.

## **Housing Credit Forms:**

**All Forms Referenced in this QAP are available at:**

**<http://housing.mt.gov/MFOAP>**

**Applicants, Developers, Owners, Management Companies and all other interested persons submitting Applications, Cost Certifications, Compliance materials, other materials and any fees to MBOH are responsible to review the website and to make such submission on the most current Form, including the most current Fee Schedule available on the MBOH website as of the date of the submission. MBOH may require resubmission of any item if submitted without using or complying with the current Form or without submission of the current fee amount, and late fees may be incurred if the need for such resubmission results in late submission of the correct Form or fee. Please contact MBOH staff with any questions regarding the appropriate or current Form or fee.**

# THIS IS ONLY A REFERENCE NOT PART OF THE QAP

## Montana Board of Housing Income Averaging

The designated levels may be only 20%, 30%, 40%, 50%, 60%, 70%, and/or 80% of AMI.

Income averaging applies to the designated income/rent levels of the units, not the incomes of individual tenant households.

Minimum set aside for income averaging will be considered to be 40% of units designated, rent restricted and income qualified to meet the 60% average.

The minimum set-aside election is irrevocable once made on Form 8609. Therefore, existing developments already placed in service are not eligible to change their minimum set-aside/income election to income averaging.

Resyndication properties are not eligible

Basic noncompliance will work the same as it does with the other minimum set-asides

Income Averaging (IA) is only permitted if all residential units are designated as HC units. At least 50% of all units must be affordable to and occupied by households earning 60% AMI or less.

The average required for MBOH will at or below 58%

Properties with a reservation of credits must meet the average income targeting from the funding application or the 58% whichever is less.

Six months before leasing up or moving tenants around the property in a rehab they must request it; MBOH will try and have it back in 3 months. Management must be trained and on board before the request is made.

To choose IA an (owner/applicant/developer) must submit:

A statement from other funding sources that the income averaging set aside will be compatible with the requirements their programs including FHLB, HOME, etc

A statement from permanent lenders and the equity provider/investor acknowledging the selection of the income averaging set-aside.

A market study or revised market that shows adequate demand for all possible combinations of unit sizes and percent limits selected.

Designate units at a specific AMI by unit type (e.g., 10 one-bedroom units at 50%) at the time of application or request to change elections.

A diagram or spreadsheet showing the AMI percentage(s) for each designated unit.

Updated Uni-app sources and uses and section c financial tabs

A lease up plan

Re-underwriting fee \$2,000



Management must be trained on IA and submit documentation of attendance and agenda for training. Management must agree in writing to deal with IA.

Statement committing to annual income averaging training for on-site property managers, and management company personnel dealing with the IA property.

Annual Compliance fees will be \$20 higher per unit for IA properties

Annual Recertifications will be required

MBOH will audit 100% of IA files at least annually

Owners of developments with more than one building will indicate on the Forms 8609 to treat all of them as part of a multiple building project (checking "Yes" on line 8b of the current form)

Income unit designations must be equitably distributed among bedroom sizes (other than a single unit per AMI limit if necessary due to odd numbers)

Rents on the 20% units and 30% units will be capped at the maximum rent including the subsidy. Units with project-based subsidy will not be capped. Rents on 50%, 60%, 70% and 80% will not be capped including the subsidy.

MBOH will consider the units floating

Lease ups will need to be done to keep 58% average or less.

This is an evolving set a side. These rules will change as MBOH and owners work through this process.

All the above rules are subject to change, to adapt to IRS direction or changes and/or MBOH direction.

### **A word of caution**

The 30% AMI level under the Housing Credit is not the same as the Extremely Low-Income (ELI) restriction under the National Housing Trust Fund. Owners of properties with both sources should be mindful of the difference.

### **4% Tax Exempt Bonds/4% Credit Applications**

The Act did not change IRC Section 142, which includes multifamily Housing Bonds. However, these properties may satisfy both income averaging and one of the elections applicable to tax-exempt financing (20 at 50 or 40 at 60).

If a lower targeted unit is Offline for UPCS average could go above the required average %

### **Income averaging scoring**

Average 52% or less	200
Average over 52% up to 55%	150
Average over 55% up to 58%	40
Average above 58%	0

# BOARD AGENDA ITEM

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## PROGRAM

Operations

## AGENDA ITEM

Approval of Freddie Mac Resolution

## BACKGROUND

The attached Resolution is to authorize staff to act on behalf of the Board of Housing when we become an approved Seller Servicer for Freddie Mac. This resolution is required to be filed with Form 988SF-HFA as Exhibit A. This form is attached for your information.

## PROPOSAL

Staff recommends the Board approve the attached resolution.

**EXHIBIT A**

**RESOLUTION OF THE  
BOARD OF DIRECTORS OF  
MONTANA BOARD OF HOUSING**

**September 10, 2019**

WHEREAS, the Board of Directors of Montana Board of Housing is adopting the following resolution (“Resolution”) to delegate authority to employees of Montana Board of Housing, with certain HFA employee titles (or names & titles), to provide wire transfer or Automated Clearing House (ACH) instructions (or modifications to previously provided instructions) to the Federal Home Loan Mortgage Corporation (“Freddie Mac”) to transfer funds (cash or securities) in connection with the sale of Mortgages to Freddie Mac by Montana Board of Housing.

NOW, THEREFORE, BE IT RESOLVED that the titles or names & titles of employees who have the titles (or names & titles) set forth below (“Authorized Employees”), are duly authorized and empowered by the Montana Board of Housing to individually and singularly provide Freddie Mac with wire transfer or ACH instructions to transfer funds (cash or securities) by wire transfer, ACH or other funds transfer system expressly approved and designated by Freddie Mac in connection with the sale of mortgages to Freddie Mac by Montana Board of Housing.

Authorized Employees:                    Executive Director  
                                                          Operations Manager  
                                                          Homeownership Manager  
                                                          Mortgage Servicing Manager  
                                                          Multifamily Manager  
                                                          Accounting and Finance Manager  
                                                          Section 8 Manager

BE IT FURTHER RESOLVED that the Authorized Employees are duly authorized individually and singularly to: (a) execute any and all paper Records and/or Electronic Records required by Freddie Mac to effectuate the authority set forth in this Resolution by: (i) affixing their original written signatures to paper Records, (ii) attaching their Electronic Signatures to Electronic Records, or (iii) associating their Electronic Signatures with Electronic Records, which contain or communicate wire transfer or ACH instructions (or modify previously provided instructions) to transfer funds (cash and/or securities) by wire transfer, ACH or other funds transfer system expressly approved by and designated by Freddie Mac, and (b) deliver any and all executed paper Records and/or Electronic Records to Freddie Mac as required.

BE IT FURTHER RESOLVED that the Authorized Employees are duly authorized and empowered to singularly and individually engage in and conduct Electronic Transactions with Freddie Mac and use electronic means, electronic systems, Electronic Records and Electronic Signatures on behalf of Montana Board of Housing to effectuate the authority set forth in this Resolution.

Any such actions set forth above heretofore taken by any of the Authorized Employees on behalf of Montana Board of Housing are hereby ratified, approved, and confirmed.

EFFECTIVE DATE of this Resolution is immediate.

ADOPTED by the Montana Board of Housing this 10<sup>th</sup> day of September, 2019.

By: \_\_\_\_\_

Patrick E. Melby, Chairman

By: \_\_\_\_\_

Bruce Brensdal, Executive Director



# Form 988SF- HFA

## Certificate of Incumbency for Housing Finance Authority

(See Form 988SF- HFA Completion Instructions Below)

I, \_\_\_\_\_, do hereby certify to the Federal Home Loan Mortgage Corporation (“Freddie Mac”) that: (i) I am the duly appointed and acting (*Select One*):  Board Chair  Executive Director  Chief Financial Officer or  Other: \_\_\_\_\_ of \_\_\_\_\_ ( a “Housing Finance Authority” or “HFA”), (ii) I am duly authorized by the HFA to execute and deliver this certificate of incumbency to Freddie Mac, (iii) the HFA is a public body, instrumentality or agency empowered by a State, county or local municipality to finance activities designed to provide affordable housing for low- to moderate-income Borrowers and first-time homeowners in areas within its jurisdiction, and (iv) the HFA is organized and existing under the laws of \_\_\_\_\_, and (v) I further certify as follows:

- Attached as **Exhibit A** hereto, is a copy of a resolution of the Board of Directors or other governing body (collectively, “Governing Body”) of the HFA dated \_\_\_\_\_, 20\_\_ (the “Resolution”) that remains in full force and effect and has not been amended, and which duly authorizes and empowers the HFA’s employees that are listed by name and title in paragraph numbered 2 below (“Authorized Employees”) to provide Freddie Mac with instructions (or modifications to previous instructions) to transfer funds (cash or securities) by wire transfer, Automated Clearing House (ACH) or other Freddie Mac designated transfer system, in connection with the sale of Mortgages to Freddie Mac by the HFA.
- The \*Authorized Employees identified and set forth below: (a) hold the titles with the HFA set forth directly across from their names, (b) are duly authorized to execute any and all paper Records or Electronic Records that are required by Freddie Mac to effectuate the authority set forth in paragraph numbered 1 above, by: (i) affixing their original handwritten signatures to such paper Records, (ii) attaching their Electronic Signatures to Electronic Records, or (iii) logically associating their Electronic Signatures with such Electronic Records, and (c) are duly authorized to deliver the executed paper Records and/or Electronic Records to Freddie Mac:

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

\* HFA must identify and list at least two Authorized Employees above



# Form 988SF- HFA

## Certificate of Incumbency for Housing Finance Authority

(See Form 988SF- HFA Completion Instructions Below)

I, Bruce Brensda, do hereby certify to the Federal Home Loan Mortgage Corporation ("Freddie Mac") that: (i) I am the duly appointed and acting (*Select One*):  Board Chair  Executive Director  Chief Financial Officer or  Other: \_\_\_\_\_ of Montana Board of Housing ( a "Housing Finance Authority" or "HFA"), (ii) I am duly authorized by the HFA to execute and deliver this certificate of incumbency to Freddie Mac, (iii) the HFA is a public body, instrumentality or agency empowered by a State, county or local municipality to finance activities designed to provide affordable housing for low- to moderate-income Borrowers and first-time homeowners in areas within its jurisdiction, and (iv) the HFA is organized and existing under the laws of Montana, and (v) I further certify as follows:

- Attached as **Exhibit A** hereto, is a copy of a resolution of the Board of Directors or other governing body (collectively, "Governing Body") of the HFA dated September 10, 20 19 (the "Resolution") that remains in full force and effect and has not been amended, and which duly authorizes and empowers the HFA's employees that are listed by name and title in paragraph numbered 2 below ("Authorized Employees") to provide Freddie Mac with instructions (or modifications to previous instructions) to transfer funds (cash or securities) by wire transfer, Automated Clearing House (ACH) or other Freddie Mac designated transfer system, in connection with the sale of Mortgages to Freddie Mac by the HFA.
- The \*Authorized Employees identified and set forth below: (a) hold the titles with the HFA set forth directly across from their names, (b) are duly authorized to execute any and all paper Records or Electronic Records that are required by Freddie Mac to effectuate the authority set forth in paragraph numbered 1 above, by: (i) affixing their original handwritten signatures to such paper Records, (ii) attaching their Electronic Signatures to Electronic Records, or (iii) logically associating their Electronic Signatures with such Electronic Records, and (c) are duly authorized to deliver the executed paper Records and/or Electronic Records to Freddie Mac:

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
Bruce Brensda	Executive Director	
<b>Telephone:</b>	<b>eMail Address:</b>	
406.841.2844	bbrensda@mt.gov	

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>
<b>Telephone:</b>	<b>eMail Address:</b>	

\* HFA must identify and list at least two Authorized Employees above

3. The specimen signature set forth directly across from each Authorized Employee's name and title in paragraph numbered 2 above is: (i) the true and genuine handwritten signature of each such Authorized Employee or (ii) an Electronic copy or representation of the true and genuine handwritten signature, the Electronic Signature, of each such Authorized Employee.
4. Freddie Mac may conclusively rely on the accuracy, genuineness, good faith, validity, effectiveness and enforceability of any paper Record or Electronic Record provided to Freddie Mac bearing the handwritten signature or Electronic Signature of an Authorized Employee.
5. If a completed, signed and notarized Form 988ASF- HFA is attached to or logically associated with this Form 988SF-HFA by the HFA to add Authorized Employees to the Form 988SF-HFA, such Form 988ASF-HFA is hereby incorporated herein by this reference and made a part hereof. The Authorized Employees, listed in the Form 988ASF-HFA, have the same power and authority to provide Freddie Mac with wire transfer or ACH instructions as the Authorized Employees in this Form 988SF-HFA.
6. The HFA consents to its Authorized Employees engaging in and conducting Electronic Transactions with Freddie Mac in connection with providing Freddie Mac with wire transfer or ACH instructions.
7. The HFA acknowledges and agrees that capitalized terms used herein, that are not otherwise defined herein, shall have the meanings ascribed to such terms in the Freddie Mac Single-Family Seller/Service Guide, to which the HFA has ready access.
8. The information set forth in this Certificate of Incumbency is true and correct and Freddie Mac may conclusively rely upon this Certificate of Incumbency and any addendum or Resolution attached hereto (or logically associated herewith) that is delivered by HFA to Freddie Mac, until such time as: (i) the HFA delivers a replacement Form 988SF-HFA and (ii) such replacement Form 988SF-HFA is expressly accepted by Freddie Mac as complete and compliant with Freddie Mac requirements.

I acknowledge, agree and certify that: (i) I am duly authorized to execute this Form 988SF-HFA and (ii) HFA's delivery and Freddie Mac's receipt of a paper or Electronic copy of this Form 988SF-HFA, with a copy or representation of my original handwritten signature affixed hereto or my Electronic Signature attached hereto or logically associated herewith, is as valid, effective and enforceable as HFA's delivery and Freddie Mac's receipt of a paper Form 988SF-HFA with my original handwritten signature affixed thereto.

IN WITNESS WHEREOF, I have subscribed my name this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

HFA Legal Name: \_\_\_\_\_  
 (Type/Print)  
 By: \_\_\_\_\_  
 (Signer's Signature)  
 Signer's Name: \_\_\_\_\_  
 (Type/Print)  
 Signer's Title: \_\_\_\_\_  
 (Type/Print)

<b>Notary Acknowledgment</b>		
State of _____)		
County of _____)		
The foregoing instrument was signed or acknowledged before me, a Notary Public, on this __ day of _____, 20 ____, by _____.		
(Type/Print Signer's Full Name)	(Type/Print Signer's Title)	(Type/Print HFA's Complete Legal Name)
Notary Public Signature: _____		
Notary Public Printed Name: _____		<b>(NOTARY SEAL)</b>
Commission Expires: ___ / ___ / ___		
Notary Public State Registration Number: _____		

**Please retain a copy for your records. See Form 988SF-HFA Completion Instructions on the next page**

# Operations Dashboard September 2019

## Board Meetings

The next Board meeting is Monday, October 28 in Helena. The Board will make Housing Credit award decisions.

## Out of State Board Training

- October 19-22, 2019 - NCSHA Annual Conference – Boston MA (confirmed: Pat, Jeanette and Amber)

## Staffing

- Two joint interviews were held with CDD for a part-time Records Retention Specialist on August 21<sup>st</sup> and 23<sup>rd</sup>. HR completed reference checks on 9/3 and we are finalizing our hire offer.
- Operations held 3 interviews on September 4<sup>th</sup> and 5<sup>th</sup> for an Administrative Assistant position which became vacant on August 1.
- Interviews for an open Program Specialist 6 – HCV Manager were held Friday, August 30 and Monday, September 3.
- An open Accountant position was posted on August 1 and will close September 20.

## Website Redesign

Montana Housing, in partnership with the Commerce Communication Team, is undertaking a website redesign process. Our goals of the redesign include overall simplification and navigation, improved mobile access, enhanced accessibility by persons with disabilities and collaborating with CDD on shared community partners, resources and fair housing information pages. We are on-track to launch the new site in mid to late October.

## Procurement

August procurement activities included work on miscellaneous amendments and renewal contracts - CoreLogic (tax service fees for newly boarded loans), HAPPY Software Novation Agreement to MRI Software, and US Bank Master Servicer Agreement – all are expected to be completed in September 2019.

We are still striving to draft a Request for Information (RFI) for third-party Quality Control services, to be released by the end of the Q3, but may be delayed to early Q4.

## Funding Application

On September 3, Montana Housing applied to HUD's Mainstream Voucher NOFA. Mainstream Vouchers assist non-elderly persons with disabilities, including the following targeted groups:

- those transitioning out of institutional or other segregated settings
- at serious risk of institutionalization
- currently experiencing homelessness
- previously experienced homelessness and currently a client in a permanent supportive housing or rapid rehousing project

The NOFA encouraged PHAs "to develop or continue partnerships with health and human service agencies to provide participants with voluntary supportive services and increase program access." This application would not have been possible with our partners at DPHHS, and support from the Montana Continuum of Care Coalition, Montana Healthcare Foundation, Corporation for Supportive Housing and over a dozen other community partners.

## GSE Seller/Servicer Approval Work Plan

On August 15 and September 5, Homeownership, Finance and Quality Control staff collaboratively evaluated our expanded 2019 Lender Recertification process, including reviews of lender financial statements, quality control plans and investor score cards. The purpose of these reviews was to identify which participating lenders are currently approved Seller/Servicers with GSEs, to identify potential financial and/or compliance risks and to highlight internal process changes that may be needed to align with GSE third-party originator oversight requirements.

We completed our second monthly operational call with Freddie Mac on August 22. Monthly re-occurring meetings are scheduled for September and October.



Yogo Inn – 211 East Main, Lewistown MT 59101  
September 10, 2019

**ROLL CALL OF BOARD**

**MEMBERS:**

Patrick Melby, Chairman (Present)	Sheila Rice (Present)
Bob Gauthier (Present)	Eric Schindler (Present)
Johnnie McClusky (Excused)	Amber Parish (Present)
Jeanette McKee (Present)	

**STAFF:**

Bruce Brensdal, Executive Director	Cheryl Cohen, Operations Manager
Mary Bair, Multifamily Program	Vicki Bauer, Homeownership Program
Paula Loving, Executive Assistant	Todd Jackson, Marketing
Charlie Brown, Homeownership Program	Kellie Guariglia, Multifamily Program
Penny Cope, Outreach and Development	Jeannene Maas, Multifamily Program

**COUNSEL:**

Greg Gould, Luxan and Murfitt	John Wagner, Kutak Rock
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**ADVISIORS:**

**UNDERWRITERS:**

Mina Choo, RBC Capital

**OTHERS:**

Alex Burkhalter, Housing Solutions, LLC	Heather McMilin, Homeword, Inc.
Larry Phillips, Neighborworks MT	Steve Dymoke, GMD Development
Andrew Chanania, Chanania Solutions	Greg Dunfield, DMD Development
Jennifer Wheeler, Glacier Bank	Lori Davidson, Missoula Housing Authority
Gene Leuwer, GL Development	Tyler Currence, Housing Solutions, LLC

*These written minutes, together with the audio recordings of this meeting and the Board Packet, constitute the official minutes of the referenced meeting of the Montana Board of Housing (MBOH). References in these written minutes to tapes (e.g., FILE 1 – 4:34) refer to the location in the audio recordings of the meeting where the discussion occurred, and the page numbers refer to the page in the Board Packet. The audio recordings and Board Packet of the MBOH meeting of this date are*



hereby incorporated by reference and made a part of these minutes. The referenced audio recordings and Board Packet are available on the MBOH website at [Meetings and Minutes](#).

### **CALL MEETING TO ORDER**

- 3:20 Chairman Pat Melby called the Montana Board of Housing (MBOH) meeting to order at 8:32 a.m. Bruce Brensdal make housekeeping announcements.
- 4:25 Introductions of Board members and attendees were made.
- 6:50 Chairman Melby asked for public comment on items not listed on the agenda. Heather McMilin (Homewood) and Lori Davidson (Missoula Housing Authority), made public comment.

### **APPROVAL OF MINUTES**

#### **August 7, 2019 MBOH Board Meeting Minutes – page 4 of packet**

- 19:00 Motion: Amber Parish  
Second: Sheila Rice  
The August 7, 2019 MBOH Board meeting minutes were approved unanimously.

### **FINANCE PROGRAM**

#### **Finance Update – page 7 of packet**

- 20:10 Presenters: Bruce Brensdal

### **HOMEOWNERSHIP PROGRAM**

#### **Homeownership Update – page 11 of packet**

- 22:40 Presenters: Vicki Bauer

### **MORTGAGE SERVICING PROGRAM**

- 25:30 Presenters: Vicki Bauer

### **MULTIFAMILY PROGRAM**

#### **2021 Qualified Allocation Plan (QAP) – page 15 of packet**

- 26:35 Presenters: Mary Bair, Greg Gould, Bruce Brensdal  
Motion to approve the 2021 Qualified Allocation Plan (Attachment I) as posted for public comment:  
Motion: Bob Gauthier  
Second: Eric Schindler
- 34:15 Page 3 – Section 1 – Definition – Applicant: Add “except as provided in Section A.3”.  
Motion: Sheila Rice  
Second: Amber Parish  
Approved unanimously.

- 36:10 Page 6 – Section 1 – Definition – Identity of Interest: Remove “a twenty five percent (25%) or greater”; add “sole General Partner or the Managing”; remove “passive”; add “Fee”.  
Motion: Sheila Rice  
Second: Eric Schindler  
Approved unanimously.
- 41:25 Page 10 – Section 3.A.1 – First Housing Credit Project Must be Completed: Add “In-Process Project”  
Motion: Sheila Rice  
Second: Bob Gauthier  
Approved Unanimously
- 43:40 Page 11 – Section 3.A.2 – Applicant Cannot Exceed Cumulative Credit Maximum: Change “\$15 million to \$20 million”.  
Motion: Sheila Rice  
Second: Jeanette McKee  
Approved Unanimously
- 1:03:40 Page 11 – Section 3.A.3 – Other Disqualifying Conditions: Remove “the time of Application”; add “Letter of Intent”  
Motion: Sheila Rice  
Second: Jeanette McKee  
Approved Unanimously
- 1:04:45 Page 11 – Section 3.B – Minimum Set Aside: Remove from all 2021 QAP “If income averaging is selected, 3% of Units or a minimum of one Unit, whichever is higher, must be targeted at 20% or 30% if 10% of the units are targeted at 70% or above.”  
Motion: Sheila Rice  
Second: Eric Schindler  
Approved Unanimously
- 1:22:10 Page 11-12 – Section 3.C – Projects Seeking Property Tax Exemptions: Add “This requirement does not apply to 4% New Construction Projects.”  
Motion: Sheila Rice  
Second: Jeanette McKee  
Approved Unanimously

- 1:46:20 Page 13 – Section F.1 – Cost Per Unit Limit Exception: Add “by the first Monday in March 2020; remove “before submission of Letter of Intent”  
Motion: Sheila Rice  
Second: Eric Schindler  
Approved Unanimously
- 1:51:20 Page 15 – Section G.5 – Maximum Rents: Add “for existing tenants”  
Motion: Sheila Rice  
Second: Eric Schindler  
Approved Unanimously
- 1:53:50 Page 15 – Section G.5 – Maximum Rents: Add “At final allocation”  
Motion: Sheila Rice  
Second: Bob Gauthier  
Approved Unanimously
- 2:10:25 Page 36 – Section 9.D.2.b – Income Averaging – Income averaging targeting for 4% Credit Applications: Add “20%, 30%” to 40%.  
Motion: Sheila Rice  
Second: Eric Schindler  
Approved Unanimously
- 2:12:00 Page 44 – Section 9.F.2. – Additional Selection Factors: Add “m: Augmentation and/or sources of funds”  
Motion: Sheila Rice  
Second: Eric Schindler  
Approved
- 2:15:30 Page 47 – Section 10.B – Declaration of Restrictive Covenants: Add “most current”; add “Prior of issuance of 8609, documentation must be submitted”; add “first priority position”; remove “recording priority”; add “such evidence”  
Motion: Bob Gauthier  
Second: Sheila Rice  
Approved Unanimously
- 2:20:15 The 2021 Qualified Allocation Plan as amended was approved unanimously.

### **Multifamily Update**

2:22:30 Presenters: Mary Bair

### **OPERATIONS**

**Approval of Freddie Mac Resolution – page 106 of packet**

2:25:25 Presenters: Cheryl Cohen

Motion: Amber Parish

Second: Sheila Rice

The Resolution of Board of Directors of Montana Housing of Housing, delegating authorization of employees of Montana Board of Housing to provide wire transfer instructions to Federal Home Loan Mortgage Corporation (Freddie Mac) to transfer funds in connection with the sale of Mortgages to Freddie Mac by Montana Board of Housing was approved unanimously.

2:26:50 **Operations Update – page 111 of packet**

Presenters: Cheryl Cohen

### **EXECUTIVE DIRECTOR**

#### **Executive Director Update**

2:35:00 Presenters: Bruce Brensdal

### **MEETING ADJOURNMENT**

2:36:40 Meeting was adjourned at 11:15 a.m.

---

Sheila Rice, Secretary

---

Date

# MONTANA BOARD OF HOUSING

## HOUSING CREDIT PROGRAM

### 2020-2021 QUALIFIED ALLOCATION PLAN (QAP)

#### NOTICE REGARDING APPLICABLE VERSION OF QAP

This 2021 QAP will govern the Montana Board of Housing's award of the Housing Credits allocated to the Montana Board of Housing by the federal government for 2021. The process for award of 2021 Housing Credits begins with the deadline for submission of Letters of Intent on the second Monday in April 2020. The award of 2021 Housing Credits to Applicants will be made at the Board's meeting in late October 2020. (See Application Submission & Award Schedule in Section 4.B of this 2021 QAP).

This 2021 QAP may not apply to certain other processes, procedures and fees, for which the Applicable QAP may be the QAP for an earlier or later year. (See "Applicable QAP" in Section 1 of this 2021 QAP). Please contact MBOH staff with questions regarding the Applicable QAP.

**MONTANA BOARD OF HOUSING**  
**PO BOX 200528**  
**HELENA, MONTANA 59620-0528**  
**(406) 841-2840**  
**(406) 841-2841 FAX**

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## INTRODUCTION

The Low Income Housing Tax Credit is established under Section 42 of the Internal Revenue Code of 1986 ("Section 42"). The credit is a federal income tax credit for Owners of qualifying rental housing which meets certain low income occupancy and rent limitation requirements.

Congress established the Low Income Housing Tax Credit program by enactment of the Tax Reform Act of 1986. Montana Board of Housing (MBOH) implemented and began administering the Low Income Housing Tax Credit program in 1987 in the State of Montana. Since then, the program has assisted in providing for the retention, rehabilitation, and construction of rental housing for low income individuals and families for over 6,000 units throughout Montana.

The Omnibus Budget Reconciliation Act of 1989 required the appropriate administering agencies (in this case, MBOH) to allocate credits pursuant to a Qualified Allocation Plan (QAP) which sets forth the priorities, considerations, criteria and process for making Allocations to Projects in Montana. The Omnibus Budget Reconciliation Act of 1993 provided a permanent extension for the Low Income Housing Tax Credit.

MBOH is the state agency that allocates the tax credits for housing located in Montana. The per state resident amount of tax credit allocated annually for housing is limited to the amount specified by the IRS and adjusted from time to time as provided in notice from the IRS. The current allocation of Tax Credits plus any inflation factor the IRS may calculate is posted to the MBOH website, normally in August or September each year. Montana receives the minimum cap because of its population.

An Owner must obtain a Final Allocation from MBOH and meet all other applicable requirements before claiming the tax credit.

This QAP is intended to ensure the selection of those developments which best meet the most pressing affordable housing needs of low income people within the State of Montana in accordance with the guidelines and requirements established by the federal government and the requirements, considerations, factors, limitations, criteria and priorities established by the MBOH Board.

At its August ~~8, 2018, 2018~~2019 meeting, the MBOH Board considered and approved public notice and distribution of the proposed ~~2020-2021~~ QAP. Public notice of the proposed ~~2020-2021~~ QAP and the opportunity for public comment was published and distributed on ~~August 8, 2018~~ \_\_\_\_\_, 2019 with a public hearing on ~~August 23, 2018~~ \_\_\_\_\_, 2019. At its ~~September 11, 2018, 2018~~ \_\_\_\_\_, 2019 meeting, after considering written and oral public comment on the proposed ~~2020-2021~~ QAP, the MBOH Board approved the proposed ~~2020-2021~~ QAP for submission to and approval by the Montana Governor. The Governor of Montana, Steve Bullock, approved the plan as the final ~~2020-2021~~ QAP on \_\_\_\_\_, ~~2018~~2019.

MBOH annually makes available for Reservation and Allocation its authorized volume cap of credit authority subject to the provisions of this QAP. Montana's QAP for the current and prior years, along with current Forms, are available at <http://housing.mt.gov/MFOAP>. MBOH evaluates tax credit Applications, selects the Projects for which tax credits will be reserved, and allocates credits to the selected developments meeting applicable requirements. Federal legislation requires that the administering agency allocate only the amount of credit it determines necessary to the financial feasibility of the development.

Tax credits not Awarded during a given round or any unused credits from earlier rounds may, at the discretion of MBOH: be carried forward for the next round of allocation; as

MBOH determines necessary for financial feasibility, be used to increase the amount of tax credits Awarded for a Project selected for an Award of tax credits in a prior round; or be otherwise committed, Awarded or Allocated as provided in this QAP.

Consistent with the foregoing and notwithstanding any other provision of this QAP, all tax credit Awards, Reservation (Initial Allocations), Carryover Commitments, 10% Cost Certifications and Final Allocations are subject to and conditional upon IRS authorization and allocation of tax credits for the State of Montana.

## SECTION 1 - DEFINITIONS

As used in this QAP, the following definitions apply unless the context clearly requires a different meaning:

"4% Credits" means HCs that may be Awarded in accordance with the applicable QAP to Projects with tax-exempt financing under the volume limitation on private activity bonds and, except as otherwise provided by this QAP for Applications combining 4% and 9% Credits, outside the competitive allocation process applicable to 9% Credits.

"9% Credits" means HCs that may be Awarded through the competitive process in accordance with the Applicable QAP.

"10% Cost Certification" means an independent third-party CPA audit report, including a statement of eligible and qualified basis for the Project, submitted to MBOH on the Form specified by and in accordance with the requirements of this QAP.

"Absorption Rate" means the number of months projected in the Application's market study for a Project to become fully leased, using the calculations listed in the full market study guidelines posted on the MBOH website.

"Acquisition" means obtaining title, lease or other Land and Property Control over a property for purposes of an HC Project. Acquisition includes purchase, lease, donation or other means of obtaining Land or Property Control.

"Acquisition/Rehab" means Acquisition of a property with one or more existing buildings and renovation meeting Montana's minimum Rehabilitation standard set forth in Section 3, Substantial Rehabilitation, for existing buildings on the property that are part of an HC Project.

"Allocation" means an Initial Allocation or a Final Allocation.

"Applicable QAP" means:

(a) The QAP for the Housing Credit year for which the Application is or was submitted, evaluated and Awarded HCs:

(i) for purposes of any substantive issues relating to:

(A) an Award;

(B) the Development Evaluation Criteria;

(C) Scoring;

(D) Selection Criteria; and

(E) Selection Standard for such Award; and

(ii) for purposes of the fee amounts charged for:

(A) Letter of Intent;

(B) Application;

(C) Reservation (Initial Allocation);

(D) Carryover Commitment;

(E) 10% Cost Certification; and

(F) Final Allocation, the particular year's QAP under which the Application is or was submitted, evaluated and Awarded HCs;

(b) The most recently adopted QAP:

(i) for purposes of:

~~(A) Project changes;~~

~~(B) Reservation (Initial Allocation) (other than the fee amount);~~

~~(C) Declaration of Restrictive Covenants;~~

~~(D) Carryover Commitment (other than the fee amount);~~

~~(E) 10% Cost Certification (other than the fee amount);~~

~~(F) Final Allocation (other than the fee amount);~~

~~(G) Compliance requirements and compliance audits; and~~

~~(H) any post-Award procedures, the QAP most recently adopted; and~~

~~(I) Fees and fee amounts for post-Credit Refresh Project changes, Reservation,~~

~~Declaration of Restrictive Covenants, Carryover Commitment, 10% Cost Certification and Final Allocation.~~

(c) The QAP most recently adopted as of the date of submission of a Credit Refresh application:

(i) for purposes of:

~~(A) a Credit Refresh application;~~

~~(B) consideration and determination regarding a Credit Request application;~~

~~(C) payment of MBOH legal fees relating to or required as a result of a Credit Refresh application or Credit Refresh; and~~

~~(D) post-Credit Refresh Project changes, Reservation, Declaration of Restrictive Covenants, Carryover Commitment, 10% Cost Certification and Final Allocation (not including fees and fee amounts for the foregoing specified such post-award items), the QAP most recently adopted as of the date of submission of the Credit Refresh application; or, -~~

~~(d) for Projects that have received a Credit Refresh and for purposes of fees and fee amounts for post-award items (post-Credit Refresh Project changes, Reservation, Declaration of Restrictive Covenants, Carryover Commitment, 10% Cost Certification and Final Allocation), compliance requirements, compliance audits, and any other post-Award procedures, the QAP most recently adopted.~~

“Applicant” means the entity identified as such in the Application, and who is and will remain responsible to MBOH for the Application. When used in reference to a Letter of Intent, the term means the person or entity on whose behalf the Letter of Intent is submitted and who is and will remain responsible to MBOH for the Letter of Intent. The Applicant must remain the same from Letter of Intent through the Compliance Period, except as provided in Section A.3.

“Application” means a request for an Award of HCs submitted in the Form specified by and according to the requirements of this QAP.

“Architect” means a professional licensed by the state of Montana as a building architect pursuant to Mont. Code Ann. Title 37, Chapter 65.

“Available Annual Credit Allocation” is defined as the credit ceiling allocated to MBOH by the federal government for the previous calendar year and includes the state’s actual or estimated credit ceiling for the current year plus any other available credits from prior year credit authority determined as of 20 business days prior to the applicable Application deadline, and includes any credits held back pursuant to court order or subject to Award under the Corrective Award set aside.

“Award” means selection of a Project by the MBOH Board to receive a Reservation of HCs.

“Award Determination Meeting” means the meeting of the MBOH Board at which the Board selects one or more Applicants to receive an Award.

Commented [A1]: Public Comment: Homeword

Commented [A2]: Revised in response to comment.

"Builder's Overhead" means the builder's overhead shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

"Builder Profit" means the builder's profit shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.

"Carryover" means the process and determination of MBOH by which Awarded and reserved HCs are continued and carried over to the end of the second calendar year after the year of the credit award. Carryover is made by MBOH issuance of a Carryover Commitment, according to the specific requirements of this QAP.

"Carryover Commitment" means a Carryover of HCs based upon an MBOH Carryover determination, which commitment is conditional upon the Applicant performing all conditions and requirements for Final Allocation as set forth in the Applicable QAP, the Carryover Commitment document issued by MBOH and applicable law.

"Cold Weather Development and Construction" means experience of the HC Developer or Consultant on one or more Projects located above the 40 degrees north parallel.

"Commercial Purposes" means use of any Project Amenities, common space or other Project property or facilities by others than tenants for which the Project owner or management receives any compensation for such use, whether in cash or in kind.

"Common Area" means any space in the building(s) on the Project property that is not in the units (except manager units), i.e. hallways, stairways, community rooms, laundry rooms, garages/carpools, manager units, etc. Common Area is eligible to be paid for with Housing Credits.

"Compliance Period" means, with respect to any building, the initial period of 15 taxable years beginning with the 1st taxable year of the applicable credit period as provided in 26 U.S.C. § 42.

"Construction Costs" means all costs listed on the UniApp, Section C, Uses of Funds, under the Site Work and Construction and Rehab sections.

"Consultant" or "HC Consultant" means an individual or entity advising a Developer or Owner with respect to the HC Application and/or development process.

~~"Contractor's Overhead" means the contractor's overhead shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.~~

~~"Contractor Profit" means the contractor's profit shown in the Applicant's properly completed UniApp Supplement, Section C, Cost Limitations and Requirements.~~

"Credit Refresh" means a conversion of previously awarded Credits, from the original ~~Credited~~ year of the Credits Awarded (i.e., the year of the Available Annual Credit Allocation from which the Credits were awarded) to a more recent Credit year, pursuant to a Board-approved return of the Credits and immediate re-Reservation of the Credits as a more recent year's Credits, as approved by the MBOH Board in accordance with the requirements of the Applicable QAP.

"Debt Coverage Ratio" or "DCR" means the ratio of a Project's net operating income (rental income less Operating Expenses and reserve payments) to foreclosable, currently amortizing debt service obligations.

"Design Professional" means a housing/building design professional.

"Developer" means the individual(s) and/or entity(ies) specifically listed and identified as the developer in the Uniform Application, Section A - Applicant Developer/Sponsor, responsible for development, construction and completion of an HC

Project.

“Developer Fee” means those costs included by the Applicant in the UniApp, adjusted as necessary to comply with the maximum Developer’s fee specified in Section 3, Additional Cost Limitations, Developer Fees, which are included as Developer’s fees by the Cost Analysis.

“Development Evaluation Criteria” means the evaluation and scoring criteria set forth in QAP Section 9, Evaluation and Award.

“Development Team” means and includes the Applicant, Owner, Developer, General Partner, Qualified Management Company, and HC Consultant identified as such in the Application.

“Difficult Development Areas” or “DDA” means an area designated by HUD as a Difficult Development Area.

“Disqualify” or “Disqualification” means, with respect to an Application, that the Application is returned to the Applicant by MBOH without scoring and without consideration for an Award of HCs, as authorized or required by this QAP.

“Elderly Property” means a Project for which a Fair Housing Act exemption for housing for older persons will apply, i.e., for households that include at least one individual age 55 or older or in which all household members are age 62 or older, as more specifically defined in the Fair Housing Act definition of “housing for older persons” as codified at 42 U.S.C. § 3607(b)(2)(B), (C) and (C)(i). If permitted by the rules applicable to other federal funding sources involved in the Project, households may also include disabled individuals below the specified age thresholds.

“Expense Coverage Ratio” means, with respect to a Project with no hard debt included in the UniApp, the ratio of the Project’s operating income to expenses.

“Experienced Developer” means a Developer who was entitled by written agreement to receive at least 50% of the ~~Development-Developer~~ Fees on a prior low-income housing tax credit Project that has achieved 100% qualified occupancy and for which the applicable state housing finance agency has conducted a compliance audit which revealed no significant problems.

“Experienced Partner” means a member of the Development Team who was a member of the Development Team on a prior low-income housing tax credit Project that has achieved 100% qualified occupancy and for which the applicable state housing finance agency has conducted a compliance audit which revealed no significant problems.

“Extended Use Period” means the Compliance Period plus an additional period of at least 15 years, or a longer period, as specified in the Application and the Restrictive Covenants.

“Fee Schedule” means the most current version of the Fee Schedule Form referenced in this QAP. The Fee Schedule is available on the MBOH website.

“Final Allocation” means, with respect to HCs, MBOH issuance of an IRS Form 8609(s) (Low Income Housing Credit Allocation Certificate) for a Project after building construction or Rehabilitation has been completed according to the Project Application and any MBOH or MBOH Board-approved changes and the building has been Placed in Service.

“Final Cost Certification” means an independent third-party CPA audit report, including a statement of eligible and qualified basis for the Project, submitted to MBOH on the form specified by and in accordance with the requirements of this QAP, for purposes of obtaining IRS Form 8609(s).

“Form” means the most current version of any MBOH Form referenced in this QAP. All Forms are available on the MBOH website.

“General Partner” means the general partner of a partnership entity that is formed for purposes of a Project.

“General Requirements” means the contractor’s miscellaneous administrative and procedural activities and expenses that do not fall into a major-function construction category and are Project-specific and therefore not part of the contractor’s general overhead, categorized in accordance with NCSHA standards and shown in the Applicant’s properly completed UniApp Supplement, Section C, Limitations and Requirements.

“Gut Rehab” means a Project that includes the replacement and/or improvement of all major systems of the building, including (a) removing walls/ceilings back to the studs/rafters and replacing them; (b) removing/replacing trim, windows, doors, exterior siding and roof; (c) replacing HVAC, plumbing and electrical systems; and (d) replacing and/or improving the building envelope (i.e., the air barrier and thermal barrier separating exterior from interior space) by either removing materials down to the studs or structural masonry on one side of the exterior walls and subsequently improving the building envelope to meet the whole-building energy performance levels for the project type, or creating a new thermal and air barrier around the building.

“Hard Costs” means and includes building Acquisition costs, Site Work costs and Construction and Rehab costs, as shown in the Applicant’s properly completed UniApp-Supplement, Sections C, Uses of Funds.

“Hard Cost Per Square Foot” means Hard Costs divided by Project Square Footage shown in the Applicant’s properly completed UniApp-Supplement, Section C, Cost Limitations and Requirements Fees Tab.

“Hard Cost Per Unit” means an amount calculated by dividing Hard Costs by the number of units in the Project, as calculated in the UniApp-Supplement, Section C, Cost Limitations and Requirements Fees Tab, Part XI I, line “Cost Per Unit.”

“Housing Credits” or “HCs” or “Credits” means federal low-income housing tax credits allocated or available for allocation under this Montana QAP.

“Identity of Interest” between an Applicant and an In-Process Project means that the Applicant or a member of the Development Team for the Applicant Project: (i) has ~~a~~ twenty five percent (25%) or greater an interest in the ownership or developer fee payable for the In-Process Project; (ii) is the sole General Partner or the Managing General Partner of an entity formed for purposes of the In-Process Project; or (iii) is a Housing Credit Consultant for the development or construction phase of the In-Process Project and is entitled to receive a portion of the Developer Fee. The Applicant does not have an Identity of Interest with an In-Process Project solely because a person or entity involved in or providing support for the Applicant Project is or was also involved in or providing support for the In-Process Project, e.g., participating as a ~~passive~~ non-profit entity for purposes of obtaining a tax exemption, or providing community or supportive services for the Project, so long as such person or entity is not entitled to a portion of the Developer Fee.

“Initial Allocation” means the conditional setting aside by MBOH of HCs from a particular year’s federal LIHTC allocation to the state for purposes of later Carryover Commitment and/or Final Allocation to a particular Project, as documented by and subject to the requirements and conditions set forth in a written Reservation Agreement, the Applicable QAP and federal law.

“Investor” means an entity that will directly or indirectly purchase HCs from the awardee.

“Land or Property Control” means legally binding documentation of title or right to possession and use of the property, or the right to acquire title or right to possession and use of the property, for purposes the Project, including but not limited to documentation of fee ownership, lease, buy/sell agreement, option to purchase or lease, or other right, title or

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interest that will allow the Owner to acquire Proof of Ownership for purposes of Carryover.

"Large Project" means, for purposes of the Soft Cost Ratio limitation in Section 3.0F, a Project with more than 24 ~~low income~~ Housing Credit units.

"Letter of Intent" or "LOI" means a letter and attachment submitted to MBOH on the MBOH Letter of Intent Form.

"Low-Income Housing Tax Credits" means federal low-income housing tax credits, referred to in this QAP as HCs.

"Management Company" means a person or entity that has contracted with the Owner to manage the Project property, including such activities as leasing units, enforcing lease requirements and rules, repairs and maintenance, Housing Credit compliance and other matters relating to the operation of the project.

"Nationally-Recognized LIHTC Compliance Training Company" means a company recognized in the Low Income Housing Tax Credit industry as a qualified Low Income Housing Tax Credit compliance trainer.

"NCSHA" means the National Council of State Housing Agencies.

"New Construction" means construction of one or more new buildings, and includes Gut Rehabs.

"Operating Expenses" means projected ongoing costs to run or operate a property, not including expenses for amortization, depreciation or mortgage-related interest.

"Owner" means the legal entity that owns the Project.

"Permanent Supportive Housing" means housing that combines and links permanent, affordable housing with flexible, voluntary support ~~wrap-around supportive services designed to help tenants for people previously~~ experiencing homelessness or with, as well as other people with disabilities or other special needs stay housed and build the necessary skills to live as independently as possible.

"Placed in Service" means: (a) for a new or existing building, the certification of the building or the date of certification of the building as being suitable for occupancy in accordance with state or local law through issuance of a certificate of occupancy; and (b) for rehabilitation expenditures that are treated as a separate new building, the close of the 24-month period, determined in compliance with Section 42, over which such expenditures are aggregated, or, if rehabilitation is completed and the minimum expenditures requirement of Code Section 42(e)(3)(A) is met in less than 24 months, the expenditures may be treated as placed in service at the close of such shorter period, determined in compliance with Section 42. This definition is subject to the applicable provisions of Section 42 and in the event of a conflict between this definition and Section 42, the provisions of Section 42 shall control.

"Preservation" means Projects that are for the Acquisition and Rehabilitation, or Rehabilitation, of existing affordable housing stock.

"Project" means the low income residential rental building, or buildings, that are the subject of a Letter of Intent or an Application for or an Award of HCs.

"Project Square Footage" means such portion of the total square feet applicable to low-income Units and Common Areas and used for the applicable square footage calculation in the UniApp under Section B - Program Information, Part X, "Project Uses." Project Square Footage includes all building square footage available to or serving tenants, including units, management unit(s) and offices, Common Area, balconies, patios, storage and parking structures.

"Proof of Ownership" means title or right to possession and use of the property for the duration of the Compliance Period and any Extended Use Period plus one year, e.g., a



recorded deed or an executed lease agreement.

“Qualified Allocation Plan” or “QAP” means this Montana qualified allocation plan required by Section 42 of the Code.

“Qualified Census Tract” or “QCT” means an area designated as such by HUD.

“Qualified Management Company” means a Management Company that meets the education requirements specified in Section 12, Education Requirements, and is not disqualified by MBOH to serve as a Management Company on existing, new or additional tax credit Properties or Projects, based upon the company’s: (a) failure to complete timely any required training; (b) failure to have or maintain any required certification; (c) record of noncompliance, or lack of cooperation in correcting or refusal to correct noncompliance, on or with respect to any tax credit or other publicly subsidized low-income housing property; or (d) delinquent MBOH late fees (unless the Management Company demonstrates to the satisfaction of MBOH that such noncompliance or lack of cooperation was beyond such company’s control).

“Qualified Nonprofit Organization” means, with respect to a Project, an organization exempt from federal income tax under Section 501(c) (3) or (4) of the Internal Revenue Code, which is not and during the Compliance Period will not be affiliated with or controlled by a for-profit organization, whose exempt purposes include the fostering of low income housing, which owns an interest in the Project, which will materially participate in the development and operation of the Project throughout the Compliance Period, and which is not affiliated with or controlled by a for-profit organization.

“Rehabilitation,” “Rehab” or “Substantial Rehabilitation” means renovation-rehabilitation (e.g., capital improvements and/or major repairs necessary as indicated by the capital need assessment) of a building or buildings to house HC units meeting the required minimum Hard Cost Per Unit thresholds specified in Section 3, Substantial Rehabilitation.

“Related Party” means an individual or entity whose financial, family or business relationship to the individual or entity in question permit significant influence over the other to an extent that one or more parties might be prevented from fully pursuing its own separate interests. Related parties include but are not limited to: (a) family members (sibling, spouse, domestic partner, ancestor or lineal descendant); (b) a subsidiary, parent or other entity that owns or is owned by the individual or entity; (c) an entity with common control or ownership (e.g., common officers, directors, or shareholders or officers or directors who are family members of each other); (d) an entity owned or controlled through ownership or control of at least a 50% interest by an individual (the interest of the individual and individual’s family members are aggregated for such purposes) or the entity (the interest of the entity, its principals and management are aggregated for such purposes); and (e) an individual or entity who has been a Related Party in the last year or who is likely to become a Related Party in the next year.

“Reservation” means MBOH’s Initial Allocation of HCs from a particular year’s federal LIHTC allocation to the state for purposes of later Carryover Commitment and/or Final Allocation to a particular Project, as documented by and subject to the requirements and conditions set forth in a written Reservation Agreement, the Applicable QAP and federal law.

“Reservation Agreement” means a written contract entered into between MBOH and the taxpayer to provide for a Reservation and setting forth the terms and conditions under which the taxpayer may obtain a Carryover Commitment or Final Allocation.

“Restrictive Covenants” means the recorded covenants required by Section 42 of the Code. Restrictive Covenants may also be referred to as the Land Use Restriction Agreement (LURA).

“Selection Criteria” means and includes all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides and priorities set forth in this QAP and all federal requirements.

“Selection Standard” means the standard for selection of Projects to receive an Award of HCs set forth in the Award Determination subsection of Section 9, Evaluation and Award, i.e., the MBOH Board’s determination that one or more Projects best meet the most pressing affordable housing needs of low-income people within the state of Montana as more specifically set forth in such subsection.

“Small Project” means, for purposes of the Soft Cost Ratio limitation in Section 3.0E, a Project with 24 or fewer low-income Housing Credit units.

“Small Rural Project” means a Project: (a) for which the submitted tax credit Application requests tax credits in an amount up to but no more than 12.5% of the state’s Available Annual Credit Allocation, and (b) proposed to be developed and constructed in a location that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula.

“Soft Costs” means the costs of professional work and fees, interim costs, financing fees and expenses, syndication costs, soft costs and Developer’s fees as shown in the Applicant’s properly completed UniApp, Section C - Uses of Funds. Soft Costs do not include operating or replacement reserves.

“Soft-Cost-to-Hard-Cost Ratio” or “Soft Cost Ratio” means total Soft Costs divided by the sum of total Hard Costs (as calculated in the UniApp) and land value (the highest value of what is shown in a comparative market analysis, appraisal or arm’s length sale). Land value is added regardless of whether land is donated, leased, purchased or otherwise acquired.

“Sources and Uses” means the sources and uses of funds as specified in the UniApp.

“Substantial Change” means a substantial change in the Project from the Project as set forth in the Application, and includes a change in or to:

- A member of the Development Team occurring prior to Placed in Service;
- A change or amendment to the Developer Fee agreement or Consultant Fee agreement;
- Participating local entity;
- Quality or durability of construction;
- Number of units or unit composition;
- Site or floor plan;
- Square footage of Project building(s);
- Project amenities;
- Income or rent targeting;
- Rental subsidies;
- Target group;
- Project location;
- Sources and Uses (to the extent any line item of the Sources of Funds or any section of the Uses of Funds of the UniApp changes by 10% or more);
- Common Space square footage, location or purposes;
- Housing Credits required for the Project;
- Extended Use Period;
- Any Application item or information required by the Applicable QAP;
- Any item that would have resulted in a lower Development Evaluation Criteria Score under the Applicable QAP; and
- Any other significant feature, characteristic or aspect of the Project.

“Total Project Cost” mean all costs shown in UniApp Section C, Part II, Uses of Funds

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line "Total Projects Costs without Grant Admin". Total Project Cost does not include grant administration costs.

"Total Project Cost Per Square Foot" means Total Project Costs divided by Project Square Footage shown in the Applicant's properly completed UniApp Supplement, Section C, Cost ~~Limitations and Requirements Fees Tab~~.

"Total Project Cost Per Unit" means an amount calculated by dividing Total Project Costs by the number of units in the Project, as calculated in the UniApp Supplement, Section C, Cost ~~Limitations and Requirements Fees Tab~~, Part ~~XI I~~, line "Cost Per Unit."

"UniApp" means the most current Uniform Application ~~and Supplement~~ available on the MBOH website at: <http://housing.mt.gov/FAR/housingapps.mcpX>.

~~"UniApp Supplement" means the Supplement portion of the UniApp.~~

"Unit" means any residential apartment or single-family home.

"Vacancy Rate" means percentage of vacant affordable units in the Application's market area or in the property.

## SECTION 2 - OVERVIEW OF HOUSING CREDITS

A BRIEF SUMMARY OF SOME ELEMENTS OF THE HOUSING CREDIT IS AVAILABLE ON THE MBOH WEBSITE AND IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THERE ARE NUMEROUS TECHNICAL RULES GOVERNING A BUILDING'S QUALIFICATION FOR THE HOUSING CREDIT, THE AMOUNT OF THE HOUSING CREDIT, AND AN OWNER'S ABILITY TO USE THE HOUSING CREDIT TO OFFSET FEDERAL INCOME TAXES. ANYONE CONSIDERING APPLYING FOR HOUSING CREDITS SHOULD REFER, IN ADDITION TO THIS QAP, TO SECTION 42 OF THE UNITED STATES INTERNAL REVENUE CODE (26 U.S.C. § 42). DEVELOPERS OR OWNERS INTERESTED IN APPLYING FOR A CREDIT ALLOCATION SHOULD CONSULT THEIR OWN TAX ACCOUNTANT OR ATTORNEY IN PLANNING A SPECIFIC TRANSACTION.

## SECTION 3 - MONTANA SPECIFIC REQUIREMENTS

### A. Eligible Applicants

#### 1. ~~First Housing Credit Project Must Be Completed~~

An Applicant who previously received an Award of Credits for its first Housing Credit Project in Montana (~~the "In-Process Project"~~) may not receive an Award of Credits for another Housing Credit Project until the ~~first In-Process Project has been issued Form(s) 8609-achieved 100% qualified occupancy and an MBOH compliance audit has been conducted which revealed no significant problems~~. For purposes of this rule, Applicants are considered to be the same Applicant if the ~~Applicants are Related Parties Applicant has an Identity of Interest with the In-Process Project or if the same Developer or a Related Party of the Developer will receive more than 50% of the Development Fees for both Projects~~. The foregoing rule does not apply to a subsequent Housing Credit Application if the Developer partners with an Experienced Developer who will be entitled under a written agreement to receive at least 50% of the Developer Fee on the subsequent Project. ~~For purposes of this Section 3.A, an In-Process Project is any 9% Credit Project for which MBOH has issued a Reservation in any prior Credit year but has not issued a Form 8609, and for which the Reserved Credits have not been returned to or rescinded by MBOH.~~

#### 2. ~~Applicant Cannot Exceed Cumulative Credit Maximum~~

~~An Applicant is not eligible to submit a Letter of Intent or a full Application for 9% Credits if an Award of Credits for the Applicant Project would cause the Applicant's cumulative Credit~~

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amount to exceed the Cumulative Credit Maximum. The Cumulative Credit Maximum is \$15 million in total Credits for the ten year period (not including Credits awarded for tax-exempt bond developments). The Cumulative Credit Maximum applies in addition to the Maximum Credit Award provisions in Section 6.

For purposes of the Cumulative Credit Maximum:

(a) an Applicant's cumulative Credit amount is the sum of: (i) the Applicant's share(s) of the ten-year amount of Credits awarded to any In-Process Project(s) with which the Applicant has an Identity of Interest, and (ii) the Applicant's share of the ten-year amount of Credits requested for the Applicant Project;

(b) an In-Process Project is any 9% Credit Project for which MBOH has issued a Reservation in any prior Credit year but has not issued a Form 8609, and for which the Reserved Credits have not been returned to or rescinded by MBOH;

(c) The Applicant's share of the ten-year amount of Credits awarded to any In-Process Project is 100%, unless the Applicant is a co-Developer, co-Owner or Consultant for the In-Process Project; in such event, the Applicant's share is the same percentage of the Project's ten-year Credit amount as the percentage of Developer Fee the Applicant is entitled to receive for the Project or the percentage interest that Applicant owns in the Project; and

(d) Applicant must provide any documents and information regarding any In-Process Project(s) or proposed Project as requested by MBOH for purposes of determining whether an Applicant is eligible under this Cumulative Credit Maximum to submit an LOI or Application.

### **3. Other Disqualifying Conditions**

The Applicant is not eligible to apply for Credits if the Applicant or any member of the Applicant's Development Team is debarred from federal programs or FHLB (Federal Home Loan Bank), prohibited from applying for LIHTCs by another state HFA for disciplinary reasons, or has delinquent late fees due and payable to MBOH. If any member of the Development Team has delinquent late fees due and payable to MBOH at any time from submission of Letter of Intent through the Award Board meeting, the Application will be ineligible for an Award of Credits until such fees are paid in full. If such late fees are not paid in full within ten (10) business days of written notice, the Application will be returned and will receive no further consideration. Application fees will not be refunded.

An Application or Project awarded credits must be the same Project as described and represented in the Application from the time of Application-Letter of Intent through the first 5 years of the Compliance Period, except for any changes that are not Substantial Changes or any Substantial Changes that have approved by MBOH or the MBOH Board as provided in the Applicable OAP. This includes ownership, development team members, the physical property, and any Project characteristics proposed or promised in the Application (e.g., targeting, amenities, green, energy, etc).

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## **B. Minimum Set Aside**

A Project must meet the federally-required minimum set aside requirements, i.e., the 20-50 test, 40-60 test or income averaging (IA). Income averaging (IA) is available only to the extent permitted and subject to the procedures, restrictions and other requirements specified in MBOH compliance materials. If income averaging is selected, 3% of Units or a minimum of one Unit, whichever is higher, must be targeted at 20% or 30% if 10% of the units are targeted at 70% or above.

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## **B.C. Projects Seeking Property Tax Exemptions**

For Applications proposing a property tax exemption for rental housing providing affordable housing to lower-income tenants pursuant to Mont. Code Ann. § 15-6-221, the Application must affirmatively commit to providing a minimum of 50% of the Units in the property to tenants at 50% of the area median income, with rents restricted to a maximum of 30% of 50% of area median income, as calculated under Section 42. For combined 4%/9% Projects, this requirement will be applied to the Project as a whole, rather than separately to the 4% and 9% portions of the Project.

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### **C-D. Housing Credit Proceeds**

In order to allow MBOH to adequately evaluate Sources and Uses for Housing Credit Projects, the Applicant is required to provide information to MBOH regarding the proceeds or receipts generated from the Housing Credit.

At Application, expected Credit proceeds must be estimated by the Applicant. **Within 30 days after the partnership or operating agreement is signed by all parties, the Applicant must provide MBOH with a copy of the executed agreement.** If MBOH does not receive a copy of the executed agreement within 30 days of execution, a late fee will be assessed. Prior to issuance of IRS Form 8609(s), MBOH will require the accountant's certification to include gross syndication proceeds and costs of syndication, even though the costs are not allowed for eligible basis.

### **D-E. Sources and Uses Certification**

Applicants must certify that they have disclosed all of a Project's Sources and Uses, as well as its total financing, and must disclose to MBOH in writing any future changes in Sources and Uses over 10% in any UniApp section or any increase in Soft Costs throughout the development period (until 8609's are received). Applicant's certification of such disclosure must be provided to MBOH at Application, at 10% Cost Certification, at any disclosure of changes in Sources and Uses over 10% and at Final Cost Certification on the ~~MBOH- Disclosure~~ Sources and Uses Certification Form.

### **E-F. Development Cost Limitations**

To balance affordable housing needs in Montana with appropriate and efficient use of the state's allocation of ~~tax-Housing Credit~~ authority, MBOH has adopted the following cost limitations and requirements for purposes of calculating the Housing Credit amount for a particular Project. These cost limitations are based upon and in accordance with NCSHA standards.

#### **1. Hard Cost Per Unit/Hard Cost Per Square Foot and Total Project Cost Per Unit/Total Project Cost Per Square Foot**

Hard Cost Per Unit, Hard Cost Per Square Foot, Total Project Cost Per Unit and Total Project Cost Per Square Foot are subject to the specific limitations provided in other sections of this QAP. In addition, even for those projects meeting such specific limitations, MBOH will evaluate such Cost Per Unit and Cost Per Square Foot for all Projects for reasonableness, taking into account the type of housing, other development costs as detailed below, unit sizes, the intended target group of the housing and other relevant factors. MBOH will also consider in this review the area of the state and the community where the Project will be located.

All Applications must provide justification for development costs. These costs will be analyzed and scrutinized considering the individual characteristics of the Project listed above and will be compared to other like Projects.

Even though the costs of some Projects may be justifiable and even in some contexts considered reasonable given their unique characteristics, MBOH may decline to Award Credits to a Project where it determines that costs do not reflect the optimal use of Housing

Credits.

The following limit must be met:

- o Total Project Costs Per Unit may not exceed \$240,000.

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Applications exceeding this limit will be returned un-scored and will receive no further consideration, and the application fee will not be refunded. Projects must meet this limit at Letter of Intent, Application, 10% Cost Certification and Final Cost Certification. If this limit is exceeded at Final Cost Certification, negative points will be assessed with respect to future Applications as provided in Section 9, Item 9, Developer Knowledge and Responsiveness. The negative points assessment provided in this paragraph for exceeding the Total Project Costs Per Unit limit will apply only prospectively to Projects Awarded Credits in the 2017 or later Award rounds.

### Costs Per Unit Limit Exceptions

Exception requests must be submitted to MBOH staff by the first Monday in March 2020 before submission of Letter of Intent. Exceptions will only be considered for preservation of existing affordable housing and based upon documented justification (e.g., negotiated sales price or unusual needs identified in a capital needs assessment). MBOH staff will evaluate and present exception requests to the MBOH Board. Exceptions may be granted by the MBOH Board in its sole discretion.

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### 2. Additional Cost Limitations

Applications must comply with the following limitations on Contractor Overhead, General Requirements, ~~Contractor-Builder~~ Profit and Developer Fee. To the extent an Application exceeds these cost limitations, as calculated in UniApp Section C, Cost Limitations and Requirements, the excessive costs will be reduced to the limit amount for all purposes under the HC program, including without limitation, calculation of basis and eligible Project costs, determination of Credit eligibility, and any Award, Reservation (Initial Allocation) or Final Allocation of Credits.

#### a. ~~Contractor's~~ Builder's Overhead

~~Builder~~~~Contractor's~~ Overhead is limited to a maximum of 2% of Construction Costs.

#### b. General Requirements

General Requirements are limited to a maximum of 6% of Construction Costs.

#### c. ~~Contractor-Builder~~ Profit

~~Builder~~~~Contractor~~ Profit will be limited to a maximum of 6% of Construction Costs.

#### d. Developer Fees

Developer Fees for New Construction or Rehabilitation will be limited to a maximum of 15% of Total Project Costs. For purposes of this Developer Fee limit, Total Project Costs do not include Developer Fees, Project reserves or land costs. HC Consultant fees (amount must be disclosed) will be included as part of and subject to the limit on Developer Fees. Architectural, engineering, and legal services are considered to be professional services, and fees for such services are not included as Developer Fees for purposes of this limitation.

Developer fees for Acquisition will be limited to a maximum of 15% of the Project Acquisition costs.

#### e. Disclosure of Transactions Involving Related Parties

If the development includes transactions with Related Parties, all such transactions must be disclosed. Failure to fully disclose Related Party transactions may result in the Project's not receiving an Award of Housing Credits. MBOH reserves the right to negotiate lower Developer

Fees, ~~BuilderContractor~~ Profit or other Soft Costs on Projects involving Related Party transactions.

**f. Limitation on Soft Costs**

The Soft-Cost-to-Hard-Cost Ratio ("Soft Cost Ratio") for the Project, based upon the Application's UniApp, may not exceed: (i) 32% for Large Projects (more than 24 units); (ii) 37% for Small Projects (24 or fewer units) or Small Rural Projects; or (iii) 40% for 4% Credit Projects. For combined 4%/9% Projects, this limit will apply to the Soft Cost Ratio calculated based upon the combined costs for the 4% and 9% Projects. If the Soft Cost Ratio for a Project exceeds the applicable maximum, MBOH will contact the Applicant regarding the excessive costs and allow the Applicant to specify how and by what amount its Soft Costs will be reduced to comply with the maximum. The Applicant must communicate its chosen Soft Costs adjustments to MBOH staff in writing within ten (10) business days after such communication and the Application will be deemed amended to reflect such adjustments for all purposes under the HC program. All such Soft Cost adjustments and the Application, as amended to reflect such adjustments, must comply with this QAP in all other respects. If the Applicant fails to communicate its Soft Cost adjustments to MBOH staff within the required time, ~~the Application will be returned unscored and fees will not be refunded-MBOH staff will decide how and by what amount Soft Costs will be reduced to comply with the maximum and the Application will be deemed amended to reflect such adjustments for all purposes under the HC program.~~ Projects must meet this limit at Letter of Intent, Application, 10% Cost Certification and Final Cost Certification. For Projects Awarded Credits for 2018 or later years, if this limit is exceeded at Final Cost Certification, negative points will be assessed with respect to future Applications as provided in Section 9, Item 9, Developer Knowledge and Responsiveness.

**g. Professional Fees**

Professional fees include but are not limited to fees for architectural, engineering, environmental, accounting, legal, market analysis, construction management and asset management services. The financial narrative in the Uses of Funds Tab of the UniApp must address and provide justification for professional fees. These fees will be compared as a percentage to construction costs for reasonableness. Specific limits may be adopted in a future plan if needed.

**F.G. Underwriting Assumptions and Limitations**

**1. Credit Percentage Rate for Housing Credit Calculation**

The credit percentage rate published by the federal government for the month prior to the date of Application will be used by Applicants and MBOH for purposes of preparation, submission, underwriting and evaluation of Applications and Award of HCs.

**2. Operating Expenses**

MBOH will evaluate Operating Expenses and Vacancy Rate underwriting assumptions for all Projects for reasonableness, taking into account the type of housing, unit sizes, intended target group of the housing and the location of the Project within the area of the state and the community. Staff may require the Applicant to provide additional justification and documentation regarding any Operating Costs deemed to be outside the normal range.

**3. Debt Coverage Ratio**

The Debt Coverage Ratio ("DCR") should be:

- For Projects whose DCR is projected to trend upward through the first 15 years of normal operation, the DCR should be between 1.15 and 1.35 in the first year of normal operation, i.e., year 1 as shown on the DCR calculation of the UniApp.
- For Projects whose DCR is projected to trend downward through the first 15 years of

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normal operation, the DCR should be between 1.10 and 1.50 during the entire first 15 years of normal operation i.e., the 15-year period that begins with year 1 as shown on the DCR calculation of the UniApp.

DCR's outside these ranges must be justified in the Application narrative to the satisfaction of MBOH, in its sole discretion. In determining whether the Applicant's justification is acceptable, MBOH will consider the reasonableness of the Project's proposed rent levels, Operating Expenses, reserve payments, projected Vacancy Rates, debt service obligations, Soft Costs and amount of Credits requested. If the DCR, as underwritten by MBOH at Application, falls outside the ranges specified above without justification acceptable to MBOH, MBOH will reduce the amount of Credits requested by the Applicant to an amount determined by MBOH to be necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period.

MBOH considers several variables, including projected Vacancy Rates (which may require upward adjustment for Small Projects) and Operating Cost data, in conjunction with debt service coverage, in judging the long-term financial viability of Projects. MBOH may require adjustments to rents or Credit amount to assure the Credits Awarded are no greater than necessary to make the Project feasible.

MBOH will evaluate the DCR at Application, at 10% Cost Certification and at Final Cost Certification. In addition, for Projects Awarded Credits for 2018 or later years, if the DCR at 10% or Final Cost Certification has changed significantly from the DCR as underwritten by MBOH at Application, MBOH may assess negative points to the next Application that includes any member of the Development Team.

#### 4. Total Expense Ratio

MBOH will review the Project's Total Expense Ratio for reasonableness. The Total Expense Ratio is the total income divided by total expenses, including debt service. As a benchmark, NCSHA recommended practices use a 1.10 ratio. The Board will consider projects on a case by case basis that deviate materially from this ratio. Projects should discuss this ratio in their narrative if this ratio deviates materially.

#### 5. Maximum Rents

Rents must be limited to the levels specified in the Application and Declaration of Restrictive Covenants. In addition, if rent increases are permitted from time to time as a result of increase in the Area Median Income ("AMI"), such increases shall not exceed five percent (5%) in any calendar year for existing tenants.

The MBOH Board may also require that rents be adjusted to or maintained at a specified percentage of maximum target rent throughout the Extended Use Period if the Debt Coverage Ratio or Expense Ratio is outside the range recommended or required under this OAP. If required for a particular Project, this limitation must be specifically included as a condition of the HC Award and included in the Project's Restrictive Covenants.

#### 6. Operating Reserves

Minimum operating reserves must be established and maintained in an amount equal to at least four months of projected Operating Expenses, debt service payments, and annual replacement reserve payments. The specific requirements for reserves, including the term for which reserves must be held, must be included in the limited partnership or operating agreement and meet the requirements of the Investor. Using an acceptable third party source, this requirement can be met by cash, letter of credit from a financial institution, or a Developer guarantee that a syndicator has accepted the responsibility for a reserve.

#### 7. Replacement Reserves

Replacement reserves must be contributed in an amount equal to at least \$300.00 per unit

**Commented [A19]:** Public Comment: Homeward, GMD, MHA. Staff recommends adding "for existing tenants".

**Commented [A20]:** Language added in response to comments.



annually. Exceptions may be made for certain special needs or supportive housing developments. Exceptions must be documented and will be reviewed on a case by case basis. The specific requirements for reserves, including the term for which reserves must be held, will be included in the limited partnership or operating agreement and meet the requirements of the Investor.

### **8. Utility Allowances**

The Montana Department of Commerce Section 8 Utility Allowances are the only acceptable utility allowances for Applications, unless otherwise provided by USDA (Rural Development), an MBOH-approved allowance or a HUD Utility Model. Utility allowances provided by utility providers will not be considered or accepted. ~~For purposes of calculating the Maximum Rent limitation under this QAP, the gross rent is the sum of the rent amount payable by the tenant and the tenant paid utility allowance amount determined in accordance with this Subsection 8.~~

### **9. Additional Underwriting Assumptions**

The following underwriting assumptions will be used by MBOH for underwriting of all Applications:

- Vacancy rates: 10% - 20 units and less, 7% - more than 20 and up to 50 units, 5%-more than 50 units or 100% project based rental assistance;
- Income Trending: 2%;
- Expense Trending: 3%;
- Reserves Trending: as proposed in Application but not to exceed 3%;
- Debt Coverage Ratio: see "Debt Coverage Ratio" subsection above;
- Structured Debt for pro-forma not allowed; and
- Operating expenses per unit: \$3,000-\$6,000 annually.

These underwriting assumptions will be used at Application, 10% Cost Certification and Final Cost Certification. Credits will not be Awarded in an amount beyond those needed to make the Project feasible according to these underwriting assumptions.

### **G.H. Project Accessibility Requirements**

The Fair Housing Act, including design and accessibility requirements, applies to HC properties. In addition to meeting Fair Housing Act requirements, MBOH requires that all New Construction units and common areas and Rehabilitation that at least replaces interior walls and doors must incorporate the following:

For Rehab, items 3 and 4 below apply to all units and all floors where moving walls, removing wall coverings, or doing new wiring or rewiring.

1. 36 inch doors for all living areas (except pantry, storage, and closets).
2. All door hardware must comply with Fair Housing Act standards for all units.
3. Outlets mounted not less than 18 inches above floor covering.
4. Light switches, control boxes and/or thermostats mounted from 36 to 48 inches above floor covering.
5. Walls adjacent to toilets, bath tubs and shower stalls must be reinforced for later installation of grab bars.
6. All faucets must be lever style.
7. A minimum of a ground floor level half-bath with a 30X48 inch turn space (also required in Rehabilitation unless waived by staff for structural limitations or excessive cost, etc.) (does not apply if there is no living space on the ground floor level).
8. No-step entry to all ground floor level units.
9. Compliance with accessibility requirements must be certified in the architect's letter of certification submitted with the 8609(s) submission. It is suggested but not

required that Projects also include parking for caregivers for tenants with disabilities and that a lease addendum provide for moving a household without tenants with disabilities from a handicapped accessible unit to a regular unit if the handicapped accessible unit is needed for rental to a tenant with a disability.

## **H.I. Energy, Green Building and Other Initiatives, Goals and Requirements**

The following items in Subparagraphs A through K specify voluntary initiatives and goals which MBOH encourages Developers to consider in the planning and development of Projects, as well as certain Project requirements. These items are required only where so indicated by the use of mandatory language (e.g., "must"). Such initiatives, goals and requirements are subject to any further applicable provisions of this QAP.

### **1. Integrated Design Process and Community Connectivity**

Project development and design includes a holistic approach. Processes include neighborhood and community involvement to ensure Project acceptance and enhancement. Integrated design processes ensure higher quality finish Project. Existing neighborhood edges, characteristics, fabric are considered in the Project design. Some considerations may include but are not limited to a community design charrette, incorporating Project into neighborhood fabric, energy modeling, commissioning, infrared testing, etc. (see Required Infrared Testing for Projects Awarded Credits, below).

### **2. Visitability and Universal Design Principles**

Applicants should consider inclusion of visitability and universal design principles in development of the Project. MBOH encourages strong advertising of accessible features when advertising new construction through the Multiple listing services or through MontanaHousingSearch.com.

### **3. Sustainable Site, Location and Design**

The building(s) and Project site, including the surrounding area, provide opportunities for education, alternative transportation, services, and community facilities. This is evidenced, for example, by Projects using existing infrastructure, reusing a building or existing housing, redeveloping a greyfield/brownfield, or developing in an existing neighborhood. Design elements use the site's characteristics and reduce impact on the site allowing for open space and other amenities, such as infill projects, rehabilitating existing building(s), rehabilitating existing housing, providing carpooling opportunities, using well water for landscaping, etc.

### **4. Passive House Standard**

Passive House is a voluntary international building standard developed by the Passive House Institute (PHI), located in Darmstadt, Germany (referred to as the "Passive House Standard"). The Passive House Standard is composed of several strict performance requirements for new building construction. For the renovation of existing buildings, PHI developed a similar if slightly more lenient performance standard. The resulting performance represents a roughly 90% reduction in heating and cooling energy usage and up to a 75% reduction in primary energy usage from existing building stock.

### **5. Energy and Water Conservation**

Design features, product selection and renewable energy options directly reduce use of resources and result in cost savings. Design and product selection exceeds applicable energy codes in performance. Examples include but are not limited to Energy Star appliances, drip irrigation, low flow fixtures, dual flush or composting toilets, ground source heat, duct sealing, rain water collection, and low water consumption plants.

## **6. Material and Resource Efficiency**

Material selections are better quality, designed for durability and long term performance with reduced maintenance. Products used are available locally and/or contain recycled content. Construction waste is reduced in the Project through efficient installation or recycling waste during construction. Considerations include but are not limited to construction waste management specification, recycled content products, local materials, reuse existing building materials, certified lumber, and sustainable harvest lumber.

## **7. Amenities**

Applicants may consider for inclusion in the Project the amenities listed in the Amenities Form to be provided at no charge to tenants in the Project. Luxury amenities will not be considered or funded with tax credits. Items deemed luxury amenities include but are not limited to swimming pools, golf courses, tennis courts and similar amenities. The added costs of the Project attributable to higher quality amenities will be considered on a Project by Project basis for a cost to benefit assessment.

Amenities provided will not be used for Commercial Purposes. All Projects previously Awarded tax credits are subject to this restriction but are grandfathered only to the extent Commercial Purposes were specifically included in the Application.

## **8. Healthy Living Environments (Indoor Environmental Quality)**

Materials and design contribute to a healthy and comfortable living environment. Mechanical system design, construction methods and materials preserve indoor air quality during construction as well as the long term performance such as fresh air circulation and exhaust fans, bathroom and kitchen fans exhausting air and moisture, material selection with low toxicity and low VOC (volatile organic compounds) paints, sealants, and adhesives.

## **9. Smoke-Free Housing**

Promoting healthy behaviors can also have a large impact on residents at no additional cost to the Developer. Smoke-free policies protect residents against the harmful health impacts of tobacco smoke, greatly reduce the risk of fires, and prevent damage to units caused by tobacco smoke. Such policies also make properties more attractive to those who do not allow smoking in their own homes.

For New Construction Projects seeking or awarded 2016 or later year Credits, the Owner (and any Management Company) must establish and implement a written policy that prohibits smoking in the units and the indoor Common Areas of the Project, including a non-smoking clause in the lease for every Project unit. The Owner (and any Management Company) rather than MBOH will be responsible to establish, implement and enforce such written policy and lease clause. The Owner and Management Company also must make educational materials on tobacco treatment programs, including the phone number for the Montana Tobacco Quit Line, available to all tenants of the Project. The Montana Tobacco Use Prevention Program Smokefree Housing Project can provide educational materials and smokefree signage to property owners and managers free of charge, as requested. If smoking is allowed outside on the Project property, it is recommended that the written smoking policy require that smoking be restricted to areas no closer than 20 feet from all building entrances and exits. The written policy must provide appropriate exceptions for bona fide cultural or religious practices.

## **10.State of Montana Building Code**

All Projects must comply with State of Montana Building Code, whether or not the State of Montana building code has been adopted in the Project's jurisdiction.

## **11.Required Infrared Testing for Projects Awarded Credits**

*For Rehabilitation Projects Awarded HCs: Infrared tests will be required on at least 10%*

of units and a representative sampling of Common Areas both before and after the Rehabilitation. ~~At the time of testing there was~~ must be at least 20 degrees temperature difference from outdoors to inside the unit. Infrared testing must be performed by a certified tester. ~~Testing must-~~ demonstrate that improvement has been achieved. MBOH staff may approve changes to the sample size selected. A summary of such testing must be submitted to MBOH within 30 days of testing and reviewed by MBOH to qualify for issuance of IRS Form 8609(s), demonstrating that ~~at the time of testing there was at least 20 degrees temperature difference from outdoors to inside the unit. Infrared testing must be performed by a certified tester.~~

### **~~I-J.~~ Substantial Rehabilitation**

Montana's minimum Substantial Rehabilitation standard is expenditures the greater of (1) ~~\$15,000~~\$25,000 (for 4% Projects)/~~\$25,000~~\$30,000 (for 9% Projects) of Hard Cost Per Unit, or (2) an amount which is not less than 30% of the adjusted basis of the building during a 24-month or shorter period. Because Montana's Substantial Rehabilitation standard is higher than the federal minimum of \$6,200.00 in Hard Costs and 20% of adjusted basis, Montana's higher Substantial Rehabilitation standard applies.

Rehabilitation Projects applying for (9%) competitive credits must meet all requirements of the capital needs assessment and the Application must also include a list of items in each unit that will be replaced, refinished, repaired, upgraded, or otherwise rehabilitation in the Project and a detailed narrative explaining the scope, details and expectations of the rehabilitation.

### **~~J-K.~~ Tax Exempt Bond Financed Projects**

Projects with tax-exempt financing under the volume limitation on private activity bonds ("4% Projects") may be eligible to receive Housing Credits outside the state's tax credit allocation volume cap. Applications must meet all requirements of the applicable QAP and must meet at least the minimum Development Evaluation Criteria score specified in Section 9, below, to receive an Allocation of Housing Credits. Projects with tax exempt financing must submit a certification from the bond financing agency indicating that the Project meets the public purpose requirements of the bonds and that the Project is consistent with the needs of the community. For purposes of Application, evaluation and Awarding tax credits with respect to 4% Projects, the Applicable QAP is the version of the QAP most recently and finally adopted as of the date of Application submission.

### **~~K-L.~~ Eventual Home Ownership**

The opportunity for eventual home ownership allows for Projects, with sufficient justification, to make units available to be purchased by the current tenants after 15 years of successful performance as an affordable rental. Several supplemental Application documents are required for Projects that include eventual home ownership. The Application must: (1) address how the Owner will administer the transfer of ownership to a qualified homebuyer at the end of the Compliance Period; (2) either identify the price at the time of the title transfer or a reasonable process to determine the price; (3) document that the potential owners will be required to complete a homebuyer counseling program; and (4) identify how Reserve for Replacement funds will be used at the time of sale of the properties.

At the time of sale, the HC Owner must provide a copy of the title transfer together with a certificate verifying that the new homeowner completed a homebuyer program within five years prior to the transfer of title. Enforceable covenants must maintain the home as affordable and prevent sale or resale to a realtor, financial institution, or a family with an income over 80% AMI, or more than 80% of FHA appraised value. Families who exceed income levels of 80% of AMI at the time of the sale must have qualified at the appropriate AMI contained in the recorded Restrictive Covenants for the Project evidenced by the

Tenant Income Certification at the initial rent-up for the family. Tenant qualification documentation must be sent to MBOH for approval before the sale is completed. Please contact MBOH for current forms. Units not sold under the Eventual Home Ownership Program must remain in compliance with Section 42 until such time as they are sold to a qualified buyer or the end of the Extended Use Period.

### **L-M. 130% Basis Boost**

#### **1. Basis Boost for QCT and DDA Projects**

Federal law permits MBOH to reserve Housing Credits based on a "basis boost" of 30% for Projects in a Qualified Census Tract ("QCT") or in HUD designated Difficult Development Areas ("DDA"). In addition, a 30% "basis boost" may be available for non-QCT or DDA Projects based upon the specific requirements specified below.

#### **2. MBOH Discretionary Basis Boost for Non-QCT/DDA Projects**

For buildings not already eligible for the 30% "basis boost" by virtue of being located in a QCT or DDA, up to 130% of the eligible basis of a New Construction building or the Rehabilitation portion of an existing building may be considered in Awarding Housing Credits if MBOH determines that an increase in Housing Credits is necessary to achieve the Project's feasibility. MBOH staff may recommend an Award of Housing Credits, and the MBOH Board, at the time it considers authorizing Reservations of Housing Credits, may Award Credits for such buildings based upon a basis boost of up to 30%. Applications for Projects not located in a DDA or QCT may be submitted with requested Housing Credits calculated at up to 130% of eligible basis. The explanation, justification and supporting documentation must specify and explain in detail the applicable considerations supporting the need for the requested basis boost (i.e., any of items a through e, below) and provide a detailed justification for the requested basis boost. The justification must explain why the Project would not be feasible without the basis boost. In addition to the explanation and justification, MBOH may consider any one of the following factors in determining whether Housing Credits will be awarded based upon the discretionary basis boost:

- a. Qualification of the Application as a Small Rural Project;
- b. Qualification of the building location for Rural Development funding;
- c. Targeting of more than 75% of Project units to 50% or below area median income level;
- d. The Project includes historical preservation, Preservation or replacement of existing affordable housing; or
- ~~e. MBOH staff recommendation based upon need for purposes of financial feasibility.~~
- ~~e. The Project is located within a community where unusual market conditions produce higher than normal labor and material costs, unusually high land cost and/or rent and income limits which are too low to support the cash flows required by the Project's financial structure.~~

The MBOH discretionary basis boost does not apply to non-competitive 4% Credits, except as permitted by federal law.

### **M-N. Non-Housing Amenities**

Swimming pools, tennis courts, golf courses, and other similar amenities will not be funded by Housing Credits. Proposed Projects may include such amenities only if the amenities are funded by sources other than Housing Credits. Subject to the requirements of this QAP, garages or car ports may be funded by Housing Credits considering Montana's extreme winter weather.

### **N-O. Accountant and Owner Certification**

Prior to the 10% Cost Certification deadline and at Final Cost Certification, MBOH requires

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an independent third party Certified Public Accountant (CPA) audit report complying with the specific requirements listed in the CPA Audit Report Form.

### **9-P. Information Request and Release Policy**

Requests for information and documents from MBOH will be handled in accordance with and subject to applicable law and the Department of Commerce Public Records Request Policy, which policy is available on the MBOH website.

### **9-Q. Ex Parte Communication Policy**

MBOH Board members should refrain from ex parte communications with interested persons or parties, or their representatives, who may be affected by any matter on which members may take official Board action. Ex parte communications may include communications that take place outside a duly noticed meeting or hearing of the Board, relate to a matter on which the Board may take action to determine to rights or obligations of the person or party, and which convey information or may otherwise influence the Board member regarding the matter.

If a Board member is unable to avoid such communications, the member will be required to disclose at a public meeting of the Board the full content of such communication and the identity of the person making the communication. In addition, the Board member may be disqualified from participating in Board action on the matter. Such communications may also subject the Board to challenge regarding its action on the matter.

Ex parte communications do not include communications regarding general matters of housing, funding for low-income housing, or other Board policy, and do not include Board member speaking appearances, conferences, consulting engagements or other events or settings to the extent not involving communications such as those described above.

The foregoing statement is provided as general information. Ex parte communications are addressed in further detail and governed by the MBOH Ex Parte Communication Policy, available on the MBOH website.

## **SECTION 4 - APPLICATION SUBMISSION AND AWARD SCHEDULE – MANNER OF SUBMISSION**

### **A. Competitive 9% Credit Applications**

Applicants may apply for an Award of 9% Credits (including an Award for a Project combining 9% Credits and other credit sources) for a particular Project no later than the applicable submission deadline specified below or otherwise set by MBOH.

Applicants must submit the Application and the applicable fee (as set forth in Fee Schedule) to MBOH as required in this QAP.

A single Application that combines 9% Credits and other credit sources must include sub-applications with a separate UniApp for each credit source that provides the Project numbers attributable to the sub-application's credit source.

For Projects involving multiple properties in different locations to which different utility allowances and/or income limits apply, a combined Application with sub-applications for each property location must be submitted. Each sub-application must include a separate UniApp that provides the Project numbers attributable to each location. A single Application or sub-application should include all buildings within a single Project.

Complete Letters of Intent/Applications meeting all requirements of this QAP must be received at MBOH's office by 5:00 pm Mountain Time on the Letter of Intent/Application submission date specified below. In the event that any submission date falls upon a

weekend or holiday observed by Montana State government, the submission date will be the next business day thereafter as posted on MBOH's website.

## B. First Award Round

The following First Award Round deadlines are scheduled in calendar year ~~2020~~**19**:

- o Letter of Intent Submission                      2<sup>nd</sup> Monday in April  
Applicant Presentations/  
Board Invitations to Apply                      May MBOH Board Meeting
- o Application Submission                              ~~Last~~**First** Monday in ~~August~~**July**
- o Award Determination                                Late October MBOH Board Meeting

## C. Second Award Round (if any)

The Board may decide in its discretion to hold a second award round that is either any one or a combination of the following: (1) limited to those Applicants that submitted a Letter of Intent in the First Award Round but not invited to submit a full Application (a "Semi-Open Round"); (2) limited to those Applicants invited to submit an Application but not awarded Housing Credits in the first award round (a "Closed Round"); or (3) open to submission of Letters of Intent by any interested party (an "Open Round").

If the Board elects to hold a Closed Round, the Board will announce (and post on MBOH's website) such Closed Round, along with all applicable submission requirements and deadlines, presentation opportunities and award meeting dates. A Closed Round need not include additional Letters of Intent or Applications but may include only such additional documents and information submissions as the Board deems appropriate for purposes of such Closed Round.

If the Board decides to hold an Open Round, it will determine and post on MBOH's website the dates for submission of Letters of Intent and Applications, Board review, discussion and invitation to apply, Applicant presentations and Award determination.

## D. Changes in Deadlines or Dates; Board Waiver of QAP Requirements; Award Amounts

### 1. Deadlines and Dates

Any of the above deadlines and dates may be extended or changed by MBOH if circumstances warrant, and in such event MBOH will provide notice of such extension or change by posting on MBOH's website.

### 2. Waiver of QAP Requirements

The MBOH Board, in its discretion, may waive any requirement of this QAP if it determines such waiver to be in the best interests of MBOH, the HC program or the Award cycle.

### 3. Award Amounts

In any Award round or rounds, the MBOH Board may elect to Award less than all available Credits or to not Award any Credits if the MBOH Board determines that such is in the best interests of MBOH, the HC program or the Award cycle.

## E. Board Consideration and Determination Process

At the MBOH Board's meeting in the month specified or established in accordance with the above schedule, MBOH staff will present Letters of Intent to the MBOH Board. MBOH will provide an opportunity for Applicants to make a presentation to the MBOH Board regarding their Projects and Letters of Intent and will provide an opportunity for public comment on proposed Projects and Applications. Applicant presentations will be limited to

10 minutes or less. The MBOH Board may ask questions of Applicants and discuss proposed Projects for purposes of assisting the Board in determining which Projects it will invite to submit Applications and assisting Applicants in presenting better Applications, but such questions, answers and discussions shall not be binding upon MBOH in any later Award determination or other MBOH process. Applicant presentations will include any comments from any party on the Development Team, videos and presentation materials. Public comment will include in-person comments, live conference call comments and written comments. Comments are subject to reasonable limitation by the Chair to minimize duplication, reading of written materials, etc.

After considering the Letters of Intent, presentations, questions and answers and discussion, the MBOH Board will select those Projects that it will invite to submit Applications. Selection for invitation to submit an Application may be based upon consideration of any of the Selection Criteria permitted to be considered for purposes of an Award under this QAP, but no evaluation or scoring of Letters of Intent will be done or considered for purposes of selection for invitation to submit an Application. No more than 8 Projects will be selected. If the total Credits requested in the Applications for such 8 Projects is less than the amount of Credits available for Award in such round, the Board may invite one or more additional Projects to submit Applications, but may invite only the number of additional Projects necessary to meet the amount of Credits available for Award (the "ceiling"), except that the invited Project that brings the total amount of Credits requested from invited Projects to the ceiling may cause the total Credits request to exceed the ceiling. Each Project so selected by the MBOH Board will be deemed invited to submit an Application. An Application may be submitted only for a Project invited by the MBOH Board to submit an Application. All other Applications will be returned without consideration.

At the Award Determination Meeting, MBOH staff will provide Project Application information to the MBOH Board. Applicants should be available to the MBOH Board to answer questions regarding their respective Applications. The MBOH Board may ask questions of Applicants and discuss proposed Projects but there will be no Applicant presentations. MBOH will provide an opportunity for public comment on proposed Projects and Applications. Applicants shall have a brief opportunity to make comments and respond to any information presented regarding their Applications.

MBOH staff materials provided to the Board will show Small Rural Projects and other Projects in separate groupings. In considering Applications for Award of Credits, the Board may first consider Award to the Small Rural Projects applying for Credits. After any such initial consideration of Small Rural Project Applications, the Board will consider Award of remaining Credits to any Applicant. The Board may but is not required by this provision to select any Small Rural Project for an Award of Credits.

#### **F. 4% Credit Applications for Tax Exempt Bond/Loan Financed Projects**

Projects with tax-exempt financing under the volume limitation on private activity bonds ("4% Projects") may be eligible to receive tax credits outside the state's tax credit allocation volume cap. An Applicant for tax-exempt financing under the volume limitation on private activity bonds also seeking an Award of 4% Credits for a scattered-site Project under a single partnership may apply for such credits by submission of a single Application that includes sub-applications for each property included in the Project.

Full Applications for tax-exempt financing and related 4% Credits may be submitted at any time; submission is not limited to the Application schedule set forth above for 9% Credit competitive awards. However, complete Applications must be received by MBOH at least 6 weeks before the scheduled MBOH Board meeting at which the Application is to be considered. Changes to the Application that require MBOH to re-underwrite the Application will restart the minimum 6-week period.



The Application fee for 4% Projects must be submitted to and received in the MBOH office for the Application to receive consideration. In addition, Final Allocation of 4% Credits is subject to payment in full of applicable bond closing fees at bond closing per the MBOH Private Placement policy available on the MBOH website. Additionally, a 42M letter fee will be charged.

Applications for 4% Projects must meet all requirements of the Applicable QAP, including meeting at least the minimum Development Evaluation Criteria threshold score specified in Section 9 to receive an Allocation of Housing Credits. Projects with tax exempt financing must submit a certification from the bond financing agency indicating that the Project meets the public purpose requirements of the bonds and that the Project is consistent with the needs of the community. For purposes of Application, evaluation and Awarding Housing Credits with respect to 4% Projects, the Applicable QAP is the version of the QAP most recently and finally adopted as of the date of Application submission.

For 4% only projects, a Letter of Intent must be submitted with the request for an inducement resolution. The Letter of Intent does not require a Letter of Intent fee or a mini-market study.

### **G. Combined Credit Applications for Projects Involving Multiple Credit Sources**

A single Applicant may apply for credits by submission of a single Application that combines sub-applications for each property/credit request included in the Project (for example, combined 4%/9%/4% applications, or a Housing Credit application that combines Housing Credits and another credit source). Each sub-application must include a separate UniApp that provides the Project numbers attributable to the sub-application's credit source. Letters of Intent and Application for Projects combining 9% Credits with other credit sources must be submitted in a competitive 9% Credit round and by the applicable deadlines specified for such competitive round.

### **H. Application Submission Method for 4% and 9% Letter of Intent and Credit Applications**

Electronic submission of Applications using MBOH's system is preferred but hard copy Applications will also be accepted. Please contact staff (preferably at least a week ahead of the submission deadline) for set up and for specific instructions on how to access this system. In submitting or preparing to submit Applications, Applicants shall not change or create folders or otherwise change the file structure within the funding portal. An Applicant may request an additional folder by contacting MBOH staff.

### **I. Request for Increase in Amount of Credit Reservation**

As the MBOH Board, in its discretion, determines necessary for financial feasibility, returned or unreserved Housing Credits may be used to increase the amount of Housing Credits reserved for a Project after the first round Awards have been made. An increase in the amount of Housing Credits under this subsection will be considered by the MBOH Board as a last resort and requests for such increases will be scrutinized as such under the criteria provided herein. In considering a request for an increase under this subsection, the MBOH Board may consider the following factors:

1. The nature and amount of additional costs, loss of anticipated funding sources or other gap in available Project funding;
2. Significant factors leading to the need for additional Credits;
3. Availability and Applicant's use of measures to mitigate or obtain alternative funding sources to address any funding gap;
4. The need for the additional Credits to make the Project feasible;

5. Availability of returned or unreserved Housing Credits; and
6. Any anticipated potential need for returned or unreserved Credits to fund Projects that would otherwise be funded or require greater funding under the Corrective Award set aside under Section 7.

An Applicant seeking an increase in the amount of reserved Credits must apply to staff in writing for such increase and must submit new financials (UniApp Section C) and supporting documentation for the cost increases (e.g., higher bids than expected, material costs, etc.), and supporting documentation addressing each of the above-specified factors. Staff will review and evaluate the new financials and other supporting documentation and present a recommendation at a later MBOH Board meeting for consideration. Staff will not recommend and the MBOH Board will not approve any increase beyond that necessary to make the Project feasible. Any request for Credits above the amount initially Awarded is considered a request for additional Credits after Initial Allocation and is subject to the provisions of this subsection.

## **SECTION 5 – APPLICABLE FEES**

The amount(s) of and due dates for all fees required or imposed by this QAP, including but not limited to Application, Reservation, 10% Cost Certification, 8609 and Compliance fees, are as specified in the MBOH Housing Credit Fee Schedule Form (the "Fee Schedule"). All fee amounts may be adjusted by MBOH from time to time. Fees are set by MBOH staff, subject to Board approval. The amount and due date of each fee shall be posted on the MBOH website and any adjustments to any fee amount or due date shall be posted on the MBOH website in advance of the effective date of each adjustment.

All fees are nonrefundable unless otherwise specified in this QAP or the Fee Schedule. MBOH will not consider an Application or Letter of Intent if the applicable fee is not paid by the deadline set forth in the Fee Schedule.

### **A. Developer/Owner Reimbursement of Board Legal Expenses**

See Fee Schedule. The Developer/Owner of any Project awarded credits will be required to reimburse MBOH for legal fees and expenses incurred by MBOH with respect to any non-standard request, change, document or other matters relating to Reservation (Initial Allocation), Carryover Commitment, compliance or other aspects of qualifying for or obtaining Housing Credits. Such fees and expenses must be paid within 30 days of MBOH's submission of an invoice. MBOH shall not be required to complete any pending process, approval or other action until such fees and expenses are paid in full.

## **SECTION 6 - MAXIMUM AWARDS**

### **A. Maximum Credit Award**

Twenty percent (20%) of the state's Available Annual Credit Allocation will be the maximum Credit Awarded or Allocated to any one Project or Developer for the current year. ~~The state's Available Annual Credit Allocation is defined as and includes the state's actual or estimated credit ceiling for the current year plus any other available Credits from prior year credit authority determined as of 20 business days prior to the applicable application deadline, and includes any Credits held back pursuant to court order or subject to Award under the Corrective Award set aside.~~ The Developer's or Consultant's percentage of the Development-Developer Fee, as specified in a written development agreement (a copy of which must be included in the Application), will be that Developer's or Consultant's percentage of the 20% limit. The maximum Credit Award for a Project will be determined based upon the state's Available Annual Credit Allocation for the Housing Credit year from

which the Project is first Awarded HCs. ~~If the state's Available Annual Credit Allocation is not known as of 20 business days prior to the applicable application deadline, the Available Annual Credit Allocation from the previous year will be used, subject to later adjustment once the state's actual Available Annual Credit Allocation is known. If an estimated amount is used for Award purposes, all Awards based upon such estimate shall be conditional upon a final determination of the state's actual Available Annual Credit Allocation.~~ The twenty percent (20%) limit shall increase to twenty-five percent (25%) beginning with 2022 Credits, unless Congress extends the 12.5% volume cap increase provided in the consolidated Appropriation Act of 2018, in which case the twenty percent (20%) limit shall continue for the same period as such Congressional extension.

For purposes of calculating the maximum Credit Award amount and determining the amount of Credits available for award or set aside at any time, the Available Annual Credit Allocation shall not include or be adjusted with respect to any increase or decrease as a result of any Credit Refresh.

MBOH does not commit tax credits from future years, except as specifically provided in this QAP. The MBOH Board may Award Housing Credits from a future year's federally allocated Credit ceiling Available Annual Credit Allocation; (1) during the current year full Application cycle as the Board determines necessary in an amount up to 10% of the Credits requested to fully fund a Project for which current year credits are available to fund at least 90% of the Credits requested; or (2) at any time outside the competitive cycle for purposes of funding repair or replacement of a Project building due to a life/safety emergency as determined by the MBOH Board in its discretion. The Applicant must submit a Letter of Intent and the Board must invite the Applicant to submit an Application before making an Award. The Application must meet all QAP requirements.

## SECTION 7 – SET ASIDES

### A. Non-profit

Ten percent of each state's credit ceiling must be set aside for buildings which are part of one or more Projects involving Qualified Nonprofit Organizations.

The 10% non-profit set-aside requirement may be met by any Award to a Project involving a Qualified Nonprofit Organization. If no Project Awarded HCs involves a Qualified Nonprofit Organization, the non-profit set aside (i.e., 10% of the state's credit ceiling) will be held back for later Award to a Project involving a Qualified Nonprofit Organization.

### B. Corrective Award

Such portion of the state's ~~annual federally-allocated Credit ceiling Available Annual Credit Allocation~~ is reserved and set-aside as is necessary for Award of credits to:

- Any Project for which an Application was submitted in a prior round or year, if:
  - a final order of a court of competent jurisdiction determines or declares that such Applicant was entitled to an Award in such prior round or year or requires MBOH to make an Award or Allocation of tax credits to such Project;
  - a final order of a court of competent jurisdiction invalidates or sets aside an Award of credits to an approved Project from such prior round or year and a Reservation Agreement was executed by MBOH and such Applicant prior to issuance of such court order, unless such court order determines that such Project was not eligible or qualified under the applicable QAP to receive an Award of tax credits; or
  - MBOH, upon further consideration of any Award determination as required by and in accordance with the order of a court of competent jurisdiction, determines that such Project was entitled to an Award in such prior round or year.

All requirements and conditions of this Corrective Award set aside provision must be met to receive an Award under this set aside provision. The amount of any Award under the Corrective Award set aside shall be the amount specified by the court, or if no Award amount is specified by the court, an amount determined by MBOH in accordance with this QAP. The Corrective Award set aside shall be funded first from returned or unreserved tax credits from a prior year. Awards may be "future allocated" under this Corrective Action set aside, i.e., such Awards may be made from returned or unreserved tax credits from a prior year and/or the current year's credits at any MBOH Board meeting after the final court order has been issued and presented to MBOH. Such Award need not await the annual Application and Award cycle.

Where a court orders that an amount of the current year's credits be set aside for a Project pending the decision of the court, if the court's decision is not received before the end of the current year, the credits set aside will become classified as the next year's credits, as required by federal code.

If the court orders MBOH to Award credits to any Project under this set-aside, the Project must submit an updated Application so the MBOH can review and underwrite current numbers and assumptions to verify that the amount of credits requested or some other credit amount is justified for Project feasibility, unless otherwise ordered by the court. The corrective awardee must pay the Reservation fee as required in the Fee Schedule.

### **C. General Rules Regarding Set Asides**

MBOH reserves the right to determine in which set-aside a Project will be reviewed (subject to its eligibility), regardless of its eligibility for any other set-aside.

To qualify and receive consideration to receive an Award of Credits under a set-aside, the Project must meet all applicable requirements of this QAP and must receive minimum Development Evaluation Criteria score specified in this QAP.

In the event there are insufficient tax credits available to fully fund all set aside categories, the respective set asides categories shall be funded in the following order of priority: (1) Non-profit; and (2) Corrective Award.

## **SECTION 8 – LETTER OF INTENT AND APPLICATION PROCESS**

Applicants are responsible to read and comply with this Qualified Allocation Plan (QAP) (and any other Applicable QAP) and accompanying materials.

Applicants are responsible to determine the degree that their building(s) and development correspond to the MBOH's Selection Criteria contained in this QAP.

Applicants are responsible to consult their own tax attorney or accountant concerning: (a) each building's eligibility for the Credit; (b) the amount of the Credit, if any, for which their building(s) may be eligible; and (c) their ability and/or their Investor's ability to use the Credit.

### **A. Letter of Intent (LOI)**

All Projects wishing to apply for HCs in Montana must submit ~~a Letter of Intent~~ [LOI](#) by the deadline specified in Section 4 with the applicable fee.

All ~~Letters of Intent~~ [LOIs](#) must be submitted using the Forms posted on the Board's website. The Project Location, type (e.g., family or elderly), ~~Applicant~~ and Developer specified in the ~~Letter of Intent~~ [LOI](#) may not be changed in any later Application. Other information in the ~~Letter of Intent~~ [LOI](#) (e.g., cost information, number of units, unit sizes, income targeting, rents, hard and soft loan sources, etc.) will be considered the Applicant's best estimates and

**Commented [A22]:** Revised for consistency with Application definition.

may be changed in the Application. A mini-market study is required for purposes of a ~~Letter of Intent~~ LOI for competitive Credit Projects. Full market studies will not be accepted in the LOI process.

Commented [A23]: Public Comment: Travois

## B. Application

An Application may not be submitted for a Project unless an ~~LOI~~ Letter of Intent LOI has been submitted with respect to the Project according to the requirements of this QAP and the Board has invited that Project to submit an Application. MBOH will return all other Applications without consideration, along with the Application fee.

Applicants must commission a full market study as outlined in the MBOH Market Study Form. Such Market Study must be included with the Application submission in accordance with the Threshold Requirements below.

Applicants must complete and submit the Uniform Application ~~and Supplement~~, all Threshold Requirements, full market study and full Application fee by the applicable Application deadline (see Section 4, Application Submission and Award Schedule). Applicants must use the most current Form of the Uniform Application (UniApp) ~~and Supplement~~ available on the MBOH website at: <http://housing.mt.gov/UniformApplication>.

## C. Incomplete Letter of Intent or Application

The Developer/Owner that submits either a ~~Letter of Intent~~ LOI or Application that does not include any threshold item or that is substantially incomplete may submit additional information as requested and within the time specified by MBOH staff. The opportunity to submit such additional information is subject to payment of the applicable fee as set forth in the Fee Schedule. If the applicant does not submit the additional information and applicable fee, the ~~Letter of Intent~~ LOI or Application will be returned to the Applicant and will not be considered further.

## D. Threshold Requirements Are Mandatory

Threshold Requirements are mandatory for all ~~Letters of Intent~~ LOIs and Applications. ~~LOIs~~ Letters of Intent and Applications received not meeting all Threshold Requirements or other requirements of this QAP will be returned un-scored and will receive no further consideration, except as provided above in subsection 8.C. Fees will not be refunded.

Submit complete Applications to MBOH. Applications must be submitted electronically in accordance with the requirements of Section 4.H.

## E. Threshold Requirements

To be eligible for further consideration, all ~~Letters of Intent~~ LOIs and Applications must be submitted by the deadline in accordance with the requirements of this QAP and the following Threshold Requirements.

ALL MBOH FORMS REFERENCED IN THIS QAP ARE AVAILABLE ON THE MBOH WEBSITE AT [HTTP://HOUSING.MT.GOV/MFOQAP](http://HOUSING.MT.GOV/MFOQAP). ALL FORMS SUBMITTED TO MBOH IN OR AS PART OF THE APPLICATION, DEVELOPMENT, UNDERWRITING, ALLOCATION, COST CERTIFICATION, COMPLIANCE OR OTHER PROCESSES UNDER THIS QAP MUST BE THE MOST CURRENT FORM AVAILABLE ON THE MBOH WEBSITE. If the most current Form(s) are not used, submissions may be returned and required to be resubmitted on the correct Form.

Letters of Intent must:

1. Include the applicable fee;
2. Be received by the applicable deadline;
3. Include a mini-market study (for competitive Credit projects) ~~;~~ - full market studies will not be accepted; and
4. Be substantially complete and in the format prescribed in the MBOH Letter of Intent

Commented [A24]: If change is made above this will need to be changed.

Form.

Applications must:

1. Include the Application fee;
2. Be received by the applicable deadline;
3. Include all of the documents, information and other items specified in Threshold Requirements 4 through 31 below;
4. Include a cover letter summarizing the Project, limited to 2 pages;
5. Include a fully completed UniApp, including all applicable Forms, all in the most current forms as posted on the MBOH website;
6. Specify the Qualified Management Company that will provide property management service to the Project and provide a copy of the written agreement with the Management Company evidencing the company's commitment to provide management services. Upon written notice from MBOH that the Application has identified a Management Company that is not a Qualified Management Company, the Applicant must submit to MBOH within ten (10) days a written designation of a Qualified Management Company and a copy of the written agreement with the Management Company evidencing the replacement company's commitment to provide management services;
7. Include a full Market Study prepared and signed by a disinterested third party analyst, with certificate (included in MBOH Market Study [Requirements item under QAP "Forms and Templates" on the MBOH QAP webpage: https://housing.mt.gov/MFOAP#QAP-documents-for-2020-Housing-Credits-2519](https://housing.mt.gov/MFOAP#QAP-documents-for-2020-Housing-Credits-2519) ~~Form~~) signed by analyst and notarized. Market Studies must be completed within six (6) months prior to the submission date of the Application, must have the market analyst complete a physical inspection of the market area within one (1) year of the Application and must adhere to minimum market study requirements in [the MBOH Market Study ~~Form~~ Requirements](#);
8. Include documentation of Land or Property Control;
9. Include documentation from the applicable local zoning authority that applicable zoning requirements are met or otherwise addressed, e.g., Project is within applicable zoning requirements, part of an approved planned unit development, subject to a zoning change request for which a change request has been submitted, or not subject to any existing zoning requirements. The Application must include documentation from the city or county affirmatively stating how zoning requirements are met or addressed (e.g., affirming that no zoning exists). Acquisition/Rehabilitation Projects may provide documentation that the Project will not require a change in zoning requirements;
10. Include documentation of availability and capacity of utilities to serve the Project, including documentation that utilities are available to the Project and the present proximity of utilities to the Project location. Such documentation must be in the form of a letter or email from the electric, gas/propane, water and/or sewer/septic provider/company, as applicable verifying that the utilities are or will be available to the property and that the provider has the capacity to handle the load or additional load to be added by the Project. Such documentation must address water, sewer, electricity, and as appropriate, gas, propane and garbage pickup. Acquisition/Rehabilitation Projects need only provide a letter or email from the utility provider documenting the expected utility load and the utility's ability to meet such additional load. Documentation of utility availability and capacity must be current (within 18 months prior to Application date). MBOH staff may in its discretion require the Applicant to provide updated documentation. If Applicant obtains an updated letter from the utility provider, a copy of the updated letter must be provided to MBOH at Reservation or with the next submitted quarterly report;
11. Include a preliminary financing letter from a lender indicating the proposed terms

and conditions of the loan. The financing letter must formally express interest in financing the Project sufficient to support the terms and conditions represented in the Project financing section of the Application;

12. Include a letter of interest from an equity provider including an anticipated price based on the market at time of the Application;
13. Except as otherwise provided in this Subparagraph 13, include a comparative market analysis ("CMA") or an appraisal done by an independent (non-related) Montana-licensed real estate professional. Such CMA or appraisal is required regardless of the manner or method of Acquisition and must cover all real estate acquired, including land and/or buildings. **Land and existing building values must be listed separately.** A CMA or appraisal is not required to be submitted if not available in the location of the Project (e.g., if a CMA or appraisal is not available for property located within the exterior boundaries of a reservation). To qualify for this exception, the Application must include documentation demonstrating that a CMA or appraisal is not available for the property-is-located-within-the-exterior-boundaries-of-a-reservation;
14. For Rehabilitation Applications, include a full scale Capital Needs Assessment on the USDA Rural Development Capital Needs Assessment (CNA) template or similar form, projection of a minimum of 15 years a list of items for each particular Unit (identified by Unit number)in each unit that will be replaced, refinished, repaired, upgraded or otherwise rehabilitated, and a detailed narrative explaining the scope, details and expectations of the Rehabilitation. If the CNA will be more than 1 year old as of the date of Application submission, the CNA must include an update to within the most recent 6 months;
15. For Applications proposing Rehabilitation or replacement of existing units, include a preliminary relocation plan addressing the logistics of moving tenants out of their residences and providing temporary housing during the Rehabilitation, the probably length time tenants will be out of their units, and-/or replacement and returning tenants to their residences upon completion of the Rehabilitation or replacement;
16. Include a site plan, and a Design Professional's preliminary floor plan and elevations/photos of existing properties for the Project;
17. For Applications for Projects involving Qualified Nonprofit Organizations and seeking to qualify for the non-profit set aside under Section 7, include: (a) a copy of the IRS determination letter documenting such organization's 501(c)(3) or (4) status; (b) an affidavit by the organization's managing partner or member certifying that the organization is not and during the Compliance Period will not be affiliated with or controlled by a for-profit organization; and (c) documentation that one of the exempt purposes of the organization includes the fostering of low-income housing;
18. For Applications proposing a property tax exemption for rental housing providing affordable housing to lower-income tenants pursuant to Mont. Code Ann. § 15-6-221, include documentation of intent to request that the local government unit where the property is located conduct a public hearing as required by Mont. Code Ann. § 15-6-221(2). Such public hearing must be conducted by the unit of local government where the property is located and documentation of such public hearing must be submitted prior to issuance of the Carryover Commitment. If the Application does not include documentation of intent to conduct the required public hearing, the Project will be underwritten as if no exemption was or will be received. In addition to including documentation of intent to conduct such hearing, the Application must affirmatively commit to providing a minimum of 50% of the Units in the property to tenants at 50% of the area median income, with rents restricted to a maximum of 30% of 50% of area median income, as calculated under Section 42 (for combined 4%/9% Projects, this requirement will be applied to the Project as a whole, rather than separately to the 4% and 9% portions of the Project);
19. Specify the Extended Use Period;

**Commented [A25]:** If the property tax exemption is changed above this will need to be adjusted.

20. For Projects targeted for Eventual Homeownership, provide the ~~supplemental Application~~ documents and information specified in Section 3, Eventual Home Ownership;
21. Specify the selected minimum set aside ~~(20-50 test) or (40-60 test) or income averaging (IA)~~; income averaging (IA) will be available only to the extent permitted and subject to the procedures, restrictions and other requirements specified ~~in~~by MBOH ~~in future~~ compliance materials;
22. Include a copy of both the public notice and the **affidavit of publication** from the publisher, meeting the requirements specified in this Section 8, Public Notice;

- a. Public Notice

An Applicant must place a notice in the local newspaper of the intent to apply for Housing Credits, and encouraging submission of public comment to MBOH. Such notice must include name of Project, number of units, location of Project, for-profit or non-profit status, and, if applicable, intent to request tax-exempt status for the Project. The notice will be placed as a box advertisement in the newspaper within 90 days prior to the due date of the Application and will allow for not less than 30 days for submission of comments to MBOH. The notice must be published twice, with an interval of at least 14 days between the 2 publication dates. A copy of the notice, together with an affidavit of publication showing the dates published, must be included in the Application.

- b. *Example of Public Notice*

(Name of Developer, address, telephone number), a (for-profit/non-profit) organization, hereby notifies all interested persons of (city, town, community name) that we are planning to develop, (Name of Project) an affordable multi-family rental housing complex on the site at (street location). This complex will consist of (number) (one bedroom, two bedroom, or three bedroom) units for (elderly persons/families). This Project (will/will not) be exempt from property taxes.

An Application (will be/has been) submitted to the Montana Board of Housing for federal tax credits financing. You are encouraged to submit comments regarding the need for affordable multi-family rental housing in your area to the Montana Board of Housing, PO Box 200528, Helena, MT 59620-0528 or FAX (406) 841-2841. Comments will be accepted until 5 PM on (specify the date 3 weeks before the MBOH Board Award Determination Meeting (see Section 4, Application Cycle));

23. Include copies of the executed Developer Fee agreement and Consultant Fee agreement;

~~23. Include letters of community support. These support letters must be Project specific and address how the Project meets the needs of the community. New letters of support (as well as new letters of non support) must be submitted for each Application for each Application round. Generic support for affordable housing will not be considered support for the specific Project being considered. These letters will be provided to the MBOH Board for its consideration;~~

24. If the Project is an Elderly Property, specify which exemption for housing for older persons will apply;
25. Include a narrative addressing each of the Development Evaluation Criteria, demonstrating how the Application meets each of these criteria, and providing a specific explanation and justification of the points sought for each scoring item. Narrative references to the Market Study must cite the specific page and paragraph of the Market Study. The narrative must include the Applicant's own proposed total score for each scoring item in the Development Evaluation Criteria and, at the



- conclusion of the narrative, the Applicant's own proposed total score;
26. Include the completed and signed Indemnification Form and ~~Cost~~-Sponsor Certification Form;
  27. For Applicants that include as part of the Development Team a Developer with no previous history with the Montana Housing Credit Program, include the completed and signed Authorization to Obtain Information Form;
  28. Include the explanation and justification for a request for discretionary basis boost, if applicable;
  29. Identify the name of the specific entity that will have Legal ownership of the Project (LP, LLP, etc.) (~~"to be determined" or "TBD" is not acceptable~~);
  30. Documentation of the number of households on current waiting lists for the local public housing authority (the PHA/HRC for the area in which the Project is located) (as required by IRC); and
  31. Include the completed Amenity ~~List and Scoring~~ Form. This completed Form will be provided to the MBOH Board for its consideration.

Applications must also demonstrate that the proposed Projects are financially sound. This includes reasonable financing terms, costs, expenses, and sufficient cash flow to support the operations of the Project, all of which must meet the underwriting standards of MBOH.

## SECTION 9 – EVALUATION AND AWARD

### A. Threshold Evaluation and Considerations

MBOH staff will review all Applications received by the applicable submission deadline for compliance with all Threshold Requirements, including but not limited to completeness, soundness of the development, and eligibility based on federal requirements and this QAP. Except as provided above in subsection 8.C, Applications determined by MBOH staff to not substantially meet all Threshold Requirements or other requirements of this QAP or federal law will be returned un-scored and will receive no further consideration. Except as specifically provided in this QAP, Application fees will not be refunded.

MBOH staff may communicate with Applicants for purposes of providing interpretive guidance or other information or for purposes of clarifying, verifying or confirming any information in Applications, and for the purposes provided in subsection 8.C.

MBOH staff may query an Applicant or other persons regarding any concerns related to a Housing Credit Application or the management, construction or operation of a proposed or existing low-income housing Project. Questionable or illegal housing practices or management, insufficient or inadequate response by the Applicant, General Partners, or Management Company as a whole or in part, may be grounds for Disqualification of an Application and non-consideration for an Award of Housing Credits.

As part of its review of Applications, if MBOH has not received comments from community officials of the Project location, staff will contact such local community officials to discuss relevant evaluation criteria information pertaining to the Application and the proposed Project MBOH may also contact any other third parties to confirm or seek clarification regarding any information in the Application, including but not limited to checking Development Team references, ~~verifying credit reports~~ and verifying information through direct contact with the Project Developer.

Between the submission deadline and the MBOH Board Award Determination Meeting, as required by federal law, MBOH will provide notice of the Project to the chief executive officer (or the equivalent) of the local jurisdiction within which the Project ~~will be proposed to be~~ located and provide such individual a reasonable opportunity to comment on the Project.

Housing Credit Application/Allocations will be subject to three underwriting evaluations: (1) evaluation for purposes of Award; (2) evaluation for purposes of the 10% Cost Certification;

and (3) evaluation for purposes of Final Cost Certification.

MBOH will return and will not consider for an Award of Credits:

1. Incomplete Applications, except as provided above in subsection 8.C.;
2. Unsound Applications, i.e., Projects for which the Market Study and other available market information fails to demonstrate adequate market need within the proposed location community or Projects that are not financially feasible, including but not limited to viable cash flow, based upon MBOH underwriting standards as set forth in this QAP;
3. An Application submitted by an entity with a demonstrated poor track record in completion of development or management of low income housing, whether located in Montana or another state;
4. Applications submitted by Applicants with current Project(s) that have/had numerous or unresolved substantial non-compliance issues or IRS 8823's (consideration will be given to the type of 8823);
5. Any other Application failing to meet any mandatory requirement of this QAP or federal law; and
6. Any Application as otherwise specified in this QAP.

Applications meeting all minimum Threshold Requirements and not excluded from further consideration under this QAP will be evaluated for the amount of Credits needed for feasibility and long term viability and will be evaluated and scored according to the Development Evaluation Criteria section below.

## **B. Amount of Housing Credit Allocation**

Although a proposed development may be technically eligible for a certain Credit amount, federal law prohibits MBOH from allocating more Credits than necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period. Accordingly, an Award of Housing Credits under this QAP will be limited to the amount of Credits that MBOH, in its sole discretion, deems necessary to make the development financially feasible and viable as a qualified affordable Housing Credit Project throughout the Compliance Period.

In determining the amount of Credits necessary, MBOH will consider:

1. The Sources and Uses of funds and the total financing planned for the Project. Funds, including funds from federal sources, such as HOME grant money, Rural Development, and similar funds. Such federal funds may be loaned by or through a parent organization to a Project pursuant to a bona fide loan agreement at an interest rate below the Applicable Federal Rate (AFR). Such loans will not reduce the basis for the Project providing they are true loans.
2. Grants made with federal funds directly to a Project, which will reduce basis.
3. Any proceeds or receipts expected to be generated by the Housing Credits.
4. The reasonableness of the development and operational costs of the Project.

~~Based on its evaluation, MBOH will make a preliminary determination of the amount of Credits deemed necessary for the financial feasibility of the development and its viability as a qualified low income housing Project throughout the Compliance Period.~~ This determination is made solely at MBOH's discretion, and is not intended to be a representation or warranty to anyone as to the feasibility of the development. Rather, it will serve as the basis for making an Award of Credits. A similar analysis will be done at the time of 10% Cost Certification and at Final Cost Certification prior to issuing IRS Form(s) 8609. Neither the selection of a Project to receive an Award of Housing Credits nor the amount of Credits to be allocated constitutes a representation or warranty that the Owner or Developer should undertake the development, or that no risk is involved for the Investor.

## **C. Full Funding of Applications**

Just as MBOH will not allocate more Credits than necessary for the financial feasibility of the development and its viability, MBOH will not award Credits in an amount less than it deems necessary for these purposes. Therefore, if the Board Awards Credits to a Project, it will Award the amount of Credits determined by MBOH staff for the Project based upon the Applicant's requested amount (except for any *de minimis* reduction because of lack of available Credits to fully fund the full Credit amount). If the remaining amount of available Credits is insufficient to fully fund an additional Project, before Awarding Credits to a Project in an amount less than requested by the Applicant (except for any such *de minimis* reduction), the Board will prioritize the remaining Projects for an Award from the remaining Credits, and the first priority Project for such an Award will be allowed 30 days to re-submit its Application resized to the amount of Credits remaining available. After staff underwriting and evaluation of the resized Application, if MBOH staff determines based upon the resized Application that the development is financially feasible and viable as a qualified low income housing Project throughout the Compliance Period, MBOH staff will enter into a Reservation Agreement for the Project. If the first priority Project fails to submit a resized Application within 30 days or MBOH staff determines that the Project is not financially feasible or viable as proposed in the resized Application, the next priority Project will be invited to submit a resized Application, and so on, until remaining Credits are reserved for one of the prioritized Projects.

**D. Development Evaluation Criteria and Scoring**

In addition to evaluation under all other QAP Selection Criteria, Applications will be evaluated and scored according to the following Development Evaluation Criteria.

Awarding of points to Projects pursuant to these Development Evaluation Criteria is for purposes of determining that the Projects meet at least a minimum threshold of 1000 of the total possible 1260 available points to qualify for further consideration. Developments not scoring the minimum Development Evaluation Criteria score of 1000 of the total possible 1260 available points will not receive further consideration.

Non-competitive 4% Credit Bond Deals will meet at least a minimum threshold of 800 of the total possible 1260 available points to qualify for further consideration. Non-competitive developments not scoring the minimum Development Evaluation Criteria score of 800 of the total possible 1260 available points will not receive further consideration.

The Development Evaluation Criteria, other QAP Selection Criteria and information submitted or obtained with respect to Projects will be used to assist the MBOH Board in evaluating and comparing Projects.

Development Evaluation Criteria scoring is only one of several considerations taken into account by the MBOH Board. It does not control the selection of Projects that will receive an Award of tax credits. For purposes of this QAP and HC Awards and Allocations, the QAP Selection Criteria include all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides, priorities and data set forth in this QAP and all federal requirements.

**1. Extended Low Income Use\* (100 points possible)**

Federal law requires a 30-year or longer Extended Use Period. An Application in which the Applicant agrees to maintain units for low income occupancy beyond the Extended Use Period will receive points as indicated below and must incorporate these restrictions into the Restrictive Covenants.

**Years beyond initial 15**

Less than 31 years	0	points	
31 or more years	100	points	(46 years +)

Eventual Home Ownership\* Applications must also specify an Extended Use Period and will

receive points for the Extended Use Period as provided above (refer to the "Eventual Home Ownership" portion of Section 3 for supplemental Application documentation and information requirements).

**2. Lower Income Tenants\* (200 points possible)**

**a. Income and Rent Level Targeting.**

An Application will receive points for the percentage of eligible units at the percentages of area median income ("AMI") levels listed below. An Application will receive points for 40%, 50%, and 60% categories when the development targets those income and rent levels. Points awarded for 40% units are independent of and not calculated as part of 50% or 60% units, except that the number of 40% units included in the Project, if any, that exceed 10% of eligible units will be added to the number of 50% units for purposes of point scoring under the chart below. Developments will be bound by the terms committed to in the application process through the mandatory Declaration of Restrictive Covenants. Section C, Part IV, Rent and Forecasted Income of the UniApp will be used to calculate the score for this item. Scoring under the following chart is based upon the total number of HC units including a manager's unit if applicable.

Target Median Income Level	Percentage of Eligible Units	Points
40%	10% (or greater)	20 NOTE 1
50%	15-20%	60 NOTE 1
50%	21-40%	80 NOTE 1
50%	41-60%	150 NOTE 1
50%	61-100%	180 NOTE 1
60%	40%	0
60%	41-60%	20
60%	61-100%	40

**NOTE 1:** Rents @ 40% allowed to income qualify to 49% AMI.  
 Rents @ 50% allowed to income qualify to 55% AMI (40-60 election must apply)  
 (Note 1 is applicable to all existing HC properties awarded between 1990-2016, inclusive. For all other projects, such requirements will be included in the Project's Declaration of Restrictive Covenants if applicable).

**b. Income Averaging.**

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If Income Averaging is elected by the Applicant for the Project, the Application will be scored under the scoring criteria and points schedule in this subsection 2.b (rather than the criteria and points schedule in subsection 2.a above).

**Income averaging targeting for 9% Credit Applications.**

Target Median	Minimum Percentage	
Income level	of Eligible Units	Points
20%	5% or greater	(see Note 2)
30%	5% or greater	(see Note 2)
40%	5% or greater	(see Note 2)

NOTE 2: 20 points will be awarded if at least 2 of the 3 targeted percentages above are met; no points will be awarded if less than 2 of the 3 are met.

50%	15-20%	60
50%	21-40%	80
50%	41-60%	150
50%	61-100%	180
60%	40%	0
60%	41-60%	20
60%	61-100%	40
70% & 80%		0

**Income averaging targeting for 4% Credit Applications.**

<u>Target Median</u>	<u>Minimum Percentage</u>	
<u>Income level</u>	<u>of Eligible Units</u>	<u>Points</u>
40%	10% or greater	20
50%	15-20%	60
50%	21-40%	80
50%	41-60%	150
50%	61-100%	180
60%	40%	0
60%	41-60%	20
60%	61-100%	40
70% & 80%		0

**3. Project Location\* (100 points possible)**

An Application will be awarded points to the extent the Project is located in an area where amenities and/or essential services will be available to tenants, determined according to the following specifications. For scattered site Projects, all site locations must meet the following criteria for any points to be awarded. An Application will be awarded points with respect to an amenity or service as specified below, if: (i) a Project is located within 1½ miles of the specified amenity or essential service; (ii) public or contracted transportation (not including taxi or school bus service) is reasonably available to the specified amenity or service (i.e., the Project is located within ¼ mile of fixed bus stop or on a same day call basis) (or letter from provider committing to establish such service); or (iii) where applicable, the specified amenity or service is available via a no-charge delivery service to the Project Location (all distances must be as specified in the Project’s market study):

- a grocery store (convenience store does not count); or
- Medical services appropriate and available to all prospective tenants (e.g., hospital, doctor offices, etc.).

**4. Housing Needs Characteristics\* (100 points possible)**

Development meets area affordable housing needs and priorities and addresses area market concerns, such as public housing waiting lists\* (for all units and tenants), Vacancy Rate and type of housing required.

**a. Local Community Input (30 points possible)**

30 points will be awarded if the Application includes documentation of at least

one of the following forms of Local Community Input, as shown by evidence provided in the Application: (i) local neighborhood meetings held expressly for this Application with attendance rosters and minutes; (ii) local charrettes held expressly for this Application with supporting documents, concept drawings, and input from local community; (iii) other appropriate form of local community input specifically designed to gather local community input for this Application and/or (iv) City or County Commission meeting. In order to obtain the available points under any item, there must be actual local community input in some form. If a community meeting is held but there is no attendance, another form of local community input must be used. No points will be awarded if the meeting or charrette is part of another public or design meeting, unless the minutes demonstrate that a portion of the meeting was specifically dedicated to community input for this Application. No points will be awarded if the Application does not provide evidence of qualifying local community input, including minutes of any meeting, charrette or other form of local community input and copies of any written comments received. Documentation of community outreach efforts to inform and invite community members to attend any of the community input events must be included. All meetings, charrettes and other Local Community input events must be held within 6 months before the Application deadline.

**b. Appropriate Size (35 points possible)**

Points will be awarded for the appropriateness of size of the development for market needs and concerns as reflected in the Market Study. 35 points will be awarded if the number of units being proposed is 50% or less than the number of units needed as projected by the Project's Market Study. No points will be awarded if the number of units being proposed is more than 50% of the number of units needed as projected by the Project's Market Study. For projects developed, rehabilitated or constructed in a location that is not within the city limits of Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, or Missoula, no points will be awarded if the number of units being proposed is more than 75% (rather than 50%) of the number of units needed as projected by the Project's Market Study. If the Project is existing in the community, the number of units in the Project will be added to the new units needed and the above test will be applied. The Application narrative must address this scoring item with citations to the relevant pages and paragraphs of the market study.

**c. Market Need (35 points possible)**

The Application will be awarded 35 points based upon the required Market Study's documentation that the Project meets the market needs of the community, as follows:

- o Vacancy Rate is at or below 7%; and
- o Absorption Rate is less than 5 months; and
- o Rents are at least 10% below adjusted market rents.

Narrative references to the Market Study must cite the referenced page and paragraph of the Market Study.

**5. Project Characteristics\* (200 points possible)**

**a. 100 points for any one of the following items:**

**i. Affordable Housing Stock**

The Application proposes either the Preservation of existing affordable housing stock (including as part of a local (not national, state or regional) community revitalization plan\* or similar plan) or increases the affordable housing stock, through the use of funds from other sources (e.g., donation

of land, other substantial donations, reduction in taxes through tax abatement (other than non-profit exemption) or impact fees) to leverage the tax credit dollars.

**ii. Qualified Census Tract/Local Community Revitalization Plan**

The Project is located in a Qualified Census Tract,\* and its development contributes to or involves existing housing as part of a local (not national, state or regional) community revitalization plan\* or similar plan. The Application must include any such local community revitalization plan and identify where in the plan such existing housing may be found.

**iii. Historic Preservation**

The Application proposes the Acquisition and/or Rehabilitation of buildings with local, state, tribal and/or federal historic\* preservation designations.

**iv. Project-Based Rental Subsidy**

The Project has project-based rental subsidy for at least 50% of the units. The Application must provide a copy of the relevant contract or other documentary proof of subsidy from the provider. MBOH staff will verify claimed subsidies with the funding source.

**b. 100 points for Green Building and Energy Conservation Standards\*:**

Applicant's justification for green building and energy conservation includes but is not limited to Energy Star building and appliance initiatives, water saving devices and green construction and materials. For New Construction and Rehabilitation, the Application will be awarded 100 points if the Project will include at least 10 of the items as listed and described on the MBOH Green Building and Energy Form. The Application must include the completed MBOH Green Building and Energy Form. The Applicant's architect, who is qualified with respect to energy and green building standards, must provide a letter confirming the listed green building items, as shown in the MBOH Green Building and Energy Form which is referenced in and attached to the architect letter, are incorporated into the Project. For all Projects (New Construction and Rehab), the Form must list each scoring item and **specify each unit** by unit number or number of each unit type (e.g., 4 of the 10 3-bedroom units) that will include the item. This letter and the accompanying Form must be included in the Application. NOTE: The Applicant's architect also must provide certification at Final Cost Certification for 8609(s) purposes confirming that the initiatives were incorporated.

Please refer to Section 3 for mandatory infrared testing for Projects that have been Awarded HCs.

**6. Development Team Characteristics\* (400 points possible)**

Applications meeting all of the requirements of subsections a., b. and c. of this Section 6 will be awarded 400 points. Applications failing to meet any of the requirements of subsection a., b. or c. will be awarded no points for Development Team Characteristics.

**a. Development Team Experience**

Participation by an entity with a demonstrated track record of quality experience in completed development or management of low income housing tax credit Projects. MBOH will consider all members of the Development Team (Applicant, Owner, Developer, General Partner, Management Company, and HC Consultant) and whether housing Projects have been developed and operated with the highest quality either in Montana or another state. Special attention will be paid to existing Projects, amount of active local community participation used to develop Projects, and a management entity with a good compliance

track record and specialized training. If a new Developer, this requirement may be met through Experienced Partners.

**b. Management Education**

(i) one member of the Management Company meets the education requirement under Section 12, and (ii) one member of the Development Team (other than the Management Company) who is directly and actively involved with the Project has been trained by a Nationally Recognized LIHTC Compliance Training Company. For MBOH purposes, to maintain certification, the person must attend a complete class with a Nationally Recognized LIHTC Compliance Training Company at least once every four years (certificates must be attached with each Application). MBOH annual compliance training does not qualify for credit under this category.

**c. Cold Weather Development Experience**

The Project's Developer or Consultant who is actively involved in the actual construction process has experience with Cold Weather Development and Construction, as reported on the MBOH Cold Weather Experience Form. Cold Weather Development and Construction is defined as experience of the HC Developer or Consultant on one or more Projects located above the 40 degrees north parallel.

The application must list all affordable housing including low-income housing tax credit Projects in Montana or any other state developed, owned, managed or consulted on by Applicant and any member of the Development Team or for which an Award of tax credits was received, whether or not such Projects were successfully completed. All Development Team members, including Applicant, Developer, General Partner/Owner, Management Company, and HC Consultant must sign and the Application must include the completed and signed UniApp Supplement Tax Credit Information Release Form, providing consent to the release of information by other third parties.

**7. Participation of Local Entity (60 points possible)**

The MBOH Board has determined that Owner/Developer communication with local entities and/or significant participation of local entities increases the success and acceptance of the Project into the community. For purposes of this scoring item, a local entity includes a provider serving the Project locality from a physical office in the region of the state where the Project is located even if the provider does not maintain a local office in the locality.

**a. Communication/Relationships (30 points possible)**

30 points will be awarded if the Application includes documentation in the form of a detailed and descriptive narrative, confirmed in writing by the local entity, indicating that the Owner/Developer has met with one or more local entities to discuss the local entities' participation in the Project through provision of any of the following:

- a. screening and referring of individuals as prospective tenants;
- b. providing on-site services to Project tenants;
- c. donation of land or sale at a reduced price to enhance affordability;
- d. use of grant money to develop infrastructure or for other uses;
- e. significant fee waivers on local government fees; or
- f. other forms of significant monetary or in-kind support.

**b. Service Commitments/Understandings (30 points possible)**

30 points will be awarded if the Application includes a narrative in which the Owner/Developer commits to provide or arrange for provision of one or more specifically described supportive services for the duration of the Extended Use Period. The narrative must provide evidence of how such described supportive services will benefit the Project. The same component of participation by a



local entity may not be counted toward more than one item, and may be given credit by an award of points only once.

Points will not be awarded for the same item in both this Development Evaluation Criteria 7 and Development Evaluation Criteria 5, Preservation of Affordable Housing.

**8. Tenant Populations with Special Housing Needs\* (100 points possible)**

An Application will be awarded 10 points for each 5% of the units targeting or meeting the following identified needs up to a maximum of 100 points. The Application must specify the number of units targeted for or meeting each category. Section B Part XII, Units Accessibility, of the UniApp will be used to calculate the score for this item. Units may not be counted more than once or in more than one category for purposes of awarding points.

- a. Units targeted specifically for individuals with children or large families (units with 2 or more bedrooms).
- b. Units targeted specifically as Section 504 fully accessible units exceeding minimum fair housing requirements.
- c. Units targeted specifically for persons with disabilities (points limited to a maximum of 25% of units in the Project) (Application must describe the strategy that will be used to market available units to disabled persons throughout the Extended Use Period).
- d. Units targeted to veterans (points limited to a maximum of 25% of units in the Project).
- e. Units targeted to victims of domestic violence (points limited to a maximum of 25% of units in the Project).
- f. Units that provide Permanent Supportive Housing (points limited to a maximum of 25% of units in the Project).

If the Project is an Elderly Property as defined in federal law, the Application will receive 100 points under this provision.

**Example:**

- 2 – 2 bdrm units meet family requirement 20% – 40 points
- 2 – 1 bdrm units exceed section 504 20% – 40 points
- 1 – 1 bdrm unit targeted to mental illness 10% – 20 points
- 5 – 1 bdrm units with no targeting 50% – 0 points
- 10 – Total units in Project – 100 total points received

**9. Developer Knowledge and Responsiveness (Up to minus (-) 400 points possible)**

If an entity or individual participating in a Project as a member of the Development Team identified in an Application has a demonstrated poor track record or demonstrated past management weaknesses with respect to developments in Montana or in another state, or has failed in the past to respond timely to an MBOH letter of inquiry with respect to a Project, MBOH may assign negative points.

MBOH will provide written notice within thirty (30) days of MBOH learning of any event that will result in a negative point assignment, unless MBOH learns of the event after Application submission and prior to the MBOH Board's Award meeting. If MBOH learns of the event after Application submission and prior to the MBOH Board's Award meeting, MBOH will provide written notice to the Applicant within five (5) business days. The written notice must describe the event giving rise to the negative point assignment and specify the Development Team member or members affected by the negative point assignment, the number of negative points to be assigned and the number of future Applications to which negative points will be assigned. If MBOH has learned of the event after Application submission and prior to the MBOH Board's Award meeting, the notice must be provided to the Applicant and affected members of the Development Team and inform such persons or entities that they may respond in writing to MBOH within five (5) business days of the date of the notice or, if earlier, by 3 days prior to the MBOH Board's Award meeting. If MBOH learns of the event outside the period from Application submission to MBOH Board Award meeting, the notice must be provided to the particular Development Team member affected and inform such Development Team member that they may respond in writing to MBOH within thirty (30) days of the date of the notice.

**a. Demonstrated Poor Track Record**

For purposes of determining a participant's track record, MBOH may contact community officials, Development Team or Development Team member references, credit bureaus, other state tax credit administering agencies and any other sources as MBOH deems appropriate. Up to minus (-) 100 points may be assigned for each of the following: (i) demonstrated poor track record with respect to developments in Montana or in another state, and/or (ii) failure to respond within 10 working days of MBOH letter of inquiry. (***Up to Minus (-) 200 points possible***)

**b. Demonstrated Management Weaknesses**

Development Team members with past demonstrated management weaknesses, including but not limited to those management weaknesses listed below may be assigned negative points for this section (***Up to Minus (-) 200 points possible***), for example:

- i. Has not followed-through on the development of a Project from Application to rent-up and operation;
- ii. Has not complied with MBOH submission, compliance or other requirements applicable during Project development, construction and Extended Use Period;
- iii. Has not maintained a Project to Section 42 or other program standards;
- iv. Has or had numerous or outstanding substantial non-compliance issues or IRS 8823's (consideration will be given the type of 8823);
- v. Has not completed required training in a certified compliance training program;
- vi. Has not completed required management compliance retraining at least every four years;
- vii. Has requested income targeting changes that are not supported by unanticipated hardship;
- viii. For Projects Awarded Credits for 2018 or later years, has a debt coverage ratio at 10% cost certification or final allocation that has changed significantly from the debt coverage ratio as underwritten by MBOH at Application;
- ix. Has requested additional credits more than once;
- x. Has made Substantial Changes to previous tax credit applications or has failed to notify MBOH and seek approval of Substantial Changes according to QAP requirements;
- xi. Has significantly diminished the quality and long term viability of a previous Project by lowering costs below a reasonable level;
- xii. Has delinquent late fees due and payable to MBOH;
- xiii. Has intentionally provided false information to MBOH in connection with an Application, Project or any related Board inquiry or process;
- xiv. Has been a member of the Development Team for a prior Project that exceeded maximum Hard Cost Per Unit or Total Project Cost Per Unit at Final Cost Certification; or
- xv. Has been a member of the Development Team for a prior Project Awarded Credits from 2018 or later years that exceeded the applicable maximum Soft Cost Ratio at Final Cost Certification.

Negative points may not be assigned for the same matter under both Section 9(a) and 9(b).

**c. Method of Assigning Negative Points**

Any negative points will be assigned as follows:

- i. The factors that will be considered in determining whether to assign negative points and the number of any negative points to be assigned with respect to poor track record items, management weaknesses and failure to response to MBOH letters of inquiry, include:
  - A. The nature and seriousness of the incident(s);
  - B. The frequency of such incidents;
  - C. The incidents were or were not within the control of the individual or entity;
  - D. The degree and timeliness to and with which the entity or individual responded to correction and educational efforts;
  - E. The responsiveness of the individual or entity in responding timely to fees, penalties and other sanctions imposed;
  - F. The cost or financial harm caused to the Project, the tax credit agency or third parties;

- G. The nature and extent of inconvenience and harm caused to Project tenants;
  - H. The nature and extent of damage or expense caused to Project property;
  - I. The extent to which the Project as completed failed to comply with the Project as represented in the Application or in approved Project changes;
  - J. The extent to which the incident would have affected scoring of the Project Application if known as the time (although no such effect on Application scoring need be shown to justify an assignment of negative points);
  - K. The extent to which completion of a Project that received an Award of Credits was substantially delayed or prevented;
  - L. The extent to which Credits that were Awarded were recaptured;
  - M. The extent to which unreasonable or excessive fees, profits or other improper remuneration was derived improperly from a Credit Award or Project; and
  - N. The presence of any other relevant factors or considerations.
- ii. Except as otherwise provided in this Section, negative points will be assigned on the next competitive 9% Credit Application (or multiple Applications in the same competitive round) which includes as part of its Development Team any person or entity that participated as a Development Team member in the Project or Projects giving rise to the negative point assignment.
  - iii. If multiple and/or repeat instances of poor performance, management weakness or fail to respond occur or have occurred, negative points may be assigned with respect to a Development Team member for not only the first competitive round in which an Application involving such member participates but may also be assigned for such Applications in multiple future years or competitive rounds.
  - iv. If negative points are assigned as a result of poor track record, management weakness or failure to respond that occurred as part of the development/construction/rehabilitation process prior to beginning of lease-up activities or other involvement of the Qualified Management Company, negative points will not be assigned with respect to such Qualified Management Company.
  - v. If more than one Development Team member subject to a negative point assignment from a prior Project is part of the Development Team on a current or future Project Application, the total negative points assigned to the Application will be the greatest number of negative points assigned with respect to any one such participating Development Team member.
  - vi. If the Project giving rise to the negative points would have received a lower Development Evaluation Criteria score under the QAP under which the Project initially was evaluated, scored and awarded credits had the poor track record, management weakness or failure to respond been known as of Application scoring, the negative points assigned with respect to a Development Team member from the earlier Application will be the number of points corresponding to the difference in scoring that would have resulted. Such point difference shall be converted as appropriate and necessary to correspond to the current QAP point scoring system.

\* Indicates federally mandated criteria

## **E. Minimum Scoring Threshold**

Developments not scoring the minimum Development Evaluation Criteria score of 1000 points (or 800 points for non-competitive 4% Credit Bond Deals) will not receive further consideration. Applications scoring at least the minimum Development Evaluation Criteria score of 1000 points or 800 points for non-competitive 4% Credit Bond Deals and meeting all other requirements of this QAP will be considered for an Award of Housing Credits as provided in this QAP.

~~An Application or Project awarded credits must be the same Project as described and represented in the Application from the time of Application through the first 5 years of the Compliance Period, except for any changes that are not Substantial Changes or any Substantial Changes that have approved by MBOH or the MBOH Board as provided in the Applicable QAP. This includes ownership, development team members, as well as the physical property, and any Project characteristics proposed or promised in the Application (e.g., targeting, amenities, green, energy, etc).~~

## F. Award Determination Selection Standard

### 1. Selection Standard

The MBOH Board will select those Projects to receive an Award of Housing Credits that it determines best meet the most pressing affordable housing needs of low income people within the state of Montana, taking into consideration: (a) all of the requirements, considerations, factors, limitations, Development Evaluation Criteria, set asides, priorities and data (including without limitation the statistical data in the MBOH Statistical Data Form) set forth in this QAP and all federal requirements (together referred to in this QAP as the "Selection Criteria"); (b) the Development Evaluation Criteria scoring; and (c) all other information provided to the MBOH Board regarding the applicant Projects.

The awarding of points to Projects pursuant to the Development Evaluation Criteria is for purposes of determining that the Projects meet at least the minimum Development Evaluation Criteria required for further consideration and to assist the MBOH Board in evaluating and comparing Projects. Development Evaluation Criteria scoring is only one of several considerations taken into account by the MBOH Board and does not control the selection of Projects that will receive an Award of Housing Credits.

### 2. Additional Selection Factors

In addition to any other Selection Criteria specified in this QAP, the MBOH Board may consider the following factors in selecting Projects for an Award of Housing Credits to qualifying Projects:

- a. The geographical distribution of Housing Credit Projects;
- b. The rural or urban location of the Projects;
- c. The overall income levels targeted by the Projects (including deeper targeting of income levels);
- d. The need for affordable housing in the community, including but not limited to current Vacancy Rates;
- e. Rehabilitation of existing low-income housing stock;
- f. Sustainable energy savings initiatives;
- g. Financial and operational ability of the Applicant to fund, complete and maintain the Project through the Extended Use Period;
- h. Past performance of an Applicant in initiating and completing tax credit Projects;
- i. Cost of construction, land and utilities, including but not limited to costs/credits per square foot/unit;
- j. The Project is being developed in or near a historic downtown neighborhood; ~~and/or~~
- k. ~~The frequency of Awards in the respective areas where Projects are located-; and/or~~
- l. Preserving project rental assistance or have or are planning to add Section 811 units to an existing project.

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If the MBOH Board Awards Credits to an Applicant where the Award is not in keeping with the Selection Criteria of this QAP, it will publish a written explanation that will be made available to the general public pursuant to Section 42(m)(1)(A)(iv) of the Internal Revenue Code.

If all of the authorized Credits are Awarded after a particular cycle, MBOH may place qualifying Applications which did not receive an Award of tax credits on a waiting list for potential Award of Housing Credits in the event Credits become available at a later date.

Any available Credits that are not Awarded or reserved in a particular cycle may in the discretion of the MBOH Board be made available for Award in a future cycle or may be used to increase the amount of Housing Credits reserved for a previously Awarded Project as provided in this QAP.

## **SECTION 10 – RESERVATION, CARRYOVER, CREDIT REFRESH AND FINAL ALLOCATION**

~~Once MBOH has selected Projects and determined the Award of Housing Credits and amount of Credits to be reserved, MBOH will provide a Reservation Agreement, Gross Rent Floor Election, and Declaration of Restrictive Covenants to the partnership for execution and return to MBOH. Upon recording, the original recorded Restrictive Covenants must be returned promptly to MBOH. The following requirements in this Section 10 apply to all Projects Awarded Credits. This Section specifies the requirements for~~ Reservation Agreement, Gross Rent Floor Election, Declaration of Restrictive Covenants, Carryover Commitment, 10% Test, Credit Refresh, Placed in Service and Final Allocations/8609.

### **A. Reservation Agreement & Gross Rent Floor Election**

~~After an Award of Credits, MBOH will provide a Reservation Agreement, and Gross Rent Floor Election, and Declaration of Restrictive Covenants to the partnership Owner for execution and return to MBOH. The partnership Owner should must review, complete, sign, and return the Reservation Agreement and, Gross Rent Floor Election, along with the additional information and materials required below in accordance with the requirements of this subsection.~~

~~MBOH will send the successful Applicant a Reservation Agreement shortly after Award and upon meeting the foregoing requirements. The Gross Rent Floor Election reflects the Owner's election of the date when the Project's gross rent floor will be established, either at the date of the Reservation/Initial Allocation or at the date the Project is Placed in Service. The Gross Rent Floor Election form must be returned with the executed Reservation Agreement.~~

~~If the Owner elects the federal percentage(s) in the month that the Reservation (Initial Allocation) is issued by MBOH, the Reservation Agreement and Gross Rent Floor Election must be completed, signed and returned on or before the 25<sup>th</sup> of that month to assure the lock-in of the rate. If the Owner elects the placed-in-service date, the Reservation Agreement and Gross Rent Floor Election must be completed, signed and returned no later than The Applicant will have a maximum of 120 days after Award. to accept, sign and return the Reservation Agreement. Failure to return the Agreement by the deadline will result in a late fee as listed on the Fee Schedule. Where applicable, however, if the Owner elects the federal percentage(s) in the month that the Reservation (Initial Allocation) is issued by MBOH, the Reservation Agreement must be signed and returned on or before the 25<sup>th</sup> of that month to assure the lock-in of the rate. Owners electing the placed-in-service date should return the signed Reservation Agreement immediately. Upon receipt, MBOH will sign the Reservation Agreement, and return a copy to the partnership. Failure to return the Agreement and Election by the deadline will result in a late fee as listed on the Fee Schedule.~~

The Reservation Fee specified in Fee Schedule will be due and must be received by MBOH on or before the date specified in the Fee Schedule.

A Reservation Agreement is MBOH's conditional commitment to make a Carryover Commitment and/or Final Allocation to the Project, subject to the requirements and conditions of the Reservation Agreement, the QAP and federal law. Such requirements include but are not limited to submission of evidence of timely progress toward completion of the development acceptable to MBOH and compliance with federal tax credit requirements. The election on this form verifies when the Owner elects the gross rent floor for the Project. There are two options: at the Reservation/Initial Allocation, or at the date Placed in Service. This form reflects the election made by the Owner in the Reservation Agreement. This form must be returned with the executed Reservation Agreement.

~~If an unsuccessful Applicant, or a party associated with such Applicant, commences any legal action or proceeding challenging MBOH's Award determination or process, MBOH will make a Carryover Commitment or Final Allocation of Housing Credits as required by an executed Reservation Agreement to the same extent it would have been bound to do in absence of the legal challenge, unless the court determines that such Applicant was not eligible or qualified under the applicable QAP to receive an Award of Housing Credits or MBOH otherwise determines that it is precluded by Court order from doing so. If a court determines in any such action or proceeding that MBOH must Award Credits to one or more unsuccessful Applicants from such round or year, such Award or Awards will be made using any available returned or unreserved Housing Credits or current year's Credits as provided in Section 7.~~

~~MBOH will send the successful Applicant a Reservation Agreement shortly after Award and upon meeting the foregoing requirements. The Applicant will have a maximum of 120 days after award to accept, sign and return the Reservation Agreement. **Failure to return the Agreement by the deadline will result in a late fee as listed on the Fee Schedule.** Where applicable, however, if the Owner elects the federal percentage(s) in the month that the Reservation (Initial Allocation) is issued by MBOH, the Reservation Agreement must be signed and returned on or before the 25<sup>th</sup> of that month to assure the lock-in of the rate. Owners electing the placed in service date should return the signed Reservation Agreement immediately. Upon receipt, MBOH will sign the Reservation Agreement, and return a copy to the partnership.~~

~~The Reservation Fee specified in Fee Schedule will be due and must be received by MBOH on or before the date specified in the Fee Schedule.~~

Once the partnership-Owner enters into a Reservation Agreement with MBOH, the partnership-Owner must then meet the requirements and conditions described in the Reservation Agreement and provide the required documentation before it receives a Carryover Commitment or Final Allocation of Housing Credits.

MBOH will revoke an approved Reservation (Initial Allocation) and terminate the Reservation Agreement when a Project fails to make successful progress toward completion or otherwise fails to perform its obligations under the Reservation Agreement. Submitting quarterly status reports demonstrating satisfactory evidence of the Project's completion is the responsibility of the OwnerApplicant. Successful progress toward Project completion and Project completion require that such progress and completion are in substantial accordance with the Project as described and proposed in the Project Application on the Implementation Schedule, except to the extent that Substantial Changes (more than a 60 day delay) have been approved by MBOH or the MBOH Board as provided in the Applicable QAP.

NOTE: Reservation Agreements for tax credit Projects funded through tax-exempt bonds must be completed, signed, and returned to MBOH not later than five business days following the close of the bond financing agreement.

If an unsuccessful Applicant, or a party associated with such Applicant, commences any legal action or proceeding challenging MBOH's Award determination or process, MBOH will make a Carryover Commitment or Final Allocation of Housing Credits as required by an executed Reservation Agreement to the same extent it would have been bound to do in absence of the legal challenge, unless the court determines that such Applicant was not eligible or qualified under the applicable QAP to receive an Award of Housing Credits or MBOH otherwise determines that it is precluded by Court order from doing so. If a court determines in any such action or proceeding that MBOH must Award Credits to one or more unsuccessful Applicants from such round or year, such Award or Awards will be made using any available returned or unreserved Housing Credits or current year's Credits as provided in Section 7.

## **B- Gross Rent Floor Election**

~~The election on this form verifies when the Owner elects the gross rent floor for the Project. There are two options: at the Reservation/Initial Allocation, or at the date Placed in Service. This form reflects the election made by the Owner in the Reservation Agreement. This form must be returned with the executed Reservation Agreement.~~

## **C.B. Declaration of Restrictive Covenants**

To be eligible for HCs, a building must be subject to an extended low income housing commitment between the Owner and MBOH, which commitment must be established by a recorded Declaration of Restrictive Covenants (Restrictive Covenants) effective for the full Extended Use Period. The Owner must meet compliance criteria for the full Extended Use Period specified in the Restrictive Covenants. Through execution and recording of the ~~Declaration of~~ Restrictive Covenants with respect to Housing Credits, all Owners waive and forfeit the right to request that MBOH locate a non-profit qualified buyer (the "qualified contract process") and the Owner must maintain HC units through the Extended Use Period as provided in the Restrictive Covenants. The Extended Use Period specified in the ~~Declaration of~~ Restrictive Covenants may not be terminated early through the qualified contract process.

The ~~Declaration of~~ Restrictive Covenants ~~assures-assure~~ that the land and its use will be restricted for the purposes of providing low-income housing for the period proposed in the Application. Provisions included in the Restrictive Covenants will include Exhibit A-1 (Legal Description of Project Land); Exhibit A-2 (Conditions of Tax Credit Allocation) indicating the number of units at the appropriate elected income and rent levels, e.g., 30%, 40%, 50%, 60% AMI as determined by the Application (Owners will be required to maintain those income and rent levels through the Extended Use Period of the Project); Exhibit A-3 (Energy and Green Building) indicating the architect's letter provided in the Application outlining those energy and green building initiatives; Exhibit A-4 (Amenities); Exhibit A-5 (Participation by Local Entity); and Exhibit A-6 (Special Housing Needs).

When submitted to MBOH, the executed and recorded Restrictive Covenants must be accompanied by a copy of the most current ALTA survey and title commitment for the Project real property. Prior of issuance of 8609, documentation must be submitted evidencing the first priority position recording priority of the Restrictive Covenants. If such evidence the title commitment does not show that the Restrictive Covenants are in a first priority position, MBOH will require a subordination agreement from the owner or holder of any prior-recorded lien or encumbrance as a condition of issuance of IRS Form 8609, unless such prior lien or encumbrance is required by a federal agency to have priority over the Restrictive Covenants or MBOH otherwise determines in writing that subordination is not required (e.g., where such lien or encumbrance would not preclude operation of the property as low-income housing in accordance with the Restrictive Covenants or preclude enforcement of the Restrictive Covenants).

**Commented [A28]:** Language added in response to comment.

**Commented [A29]:** Public Comment: Homework

**Commented [A30]:** Language added in response to comment.

**Commented [A31]:** Language revised in response to comment.



**Submission of the executed and recorded Restrictive Covenants and related additional documents specified in the preceding paragraph is required as a condition of MBOH issuance of a Carryover Commitment. It is the Developer's responsibility to record the Declaration of Restrictive Covenants in the county in which the Project real property is located. Upon recording, the original recorded Restrictive Covenants must be returned promptly to MBOH not later than the deadline specified in Section D, Carryover Commitment together with the related documents must be submitted to MBOH by December 1 of the year for which the Award of Credits was made, except as provided in subsection C below.**

**In unusual circumstances, and for good cause shown, MBOH may permit amendments to the Declaration of Restrictive Covenants at a subsequent date.**

### **D.C. Carryover Commitment**

MBOH will issue a Carryover Commitment in December of the year for which the credits are being Awarded and such Carryover will be for a period of two (2) calendar years. To preserve this commitment the Owner/Developer must submit the 10% Cost Certification by the deadline specified ~~in the Applicable QAP~~ subsection D below.

In order to receive a Carryover Commitment, Owners must provide the executed Reservation Agreement and Gross Rent Floor, Proof of Ownership (evidence of title or right to possession and use of the property for the duration of the Compliance Period and any Extended Use Period plus one year, e.g., a recorded deed or an executed lease agreement), executed and recorded Restrictive Covenants, and the Reservation fee. Land lease periods must be at least one year longer than the Restrictive Covenant period. ~~When submitted to MBOH, the executed and recorded Restrictive Covenants must be accompanied by a copy of the ALTA survey and title commitment for the Project real property evidencing the recording priority of the Restrictive Covenants. If the title commitment does not show that the Restrictive Covenants are in a first priority position, MBOH will require a subordination agreement from the owner or holder of any prior recorded lien or encumbrance as a condition of issuance of IRS Form 8609, unless such prior lien or encumbrance is required by a federal agency to have priority over the Restrictive Covenants or MBOH otherwise determines in writing that subordination is not required (e.g., where such lien or encumbrance would not preclude operation of the property as low income housing in accordance with the Restrictive Covenants or preclude enforcement of the Restrictive Covenants).~~

These items must be received by December 1, of the year for which the Award of Credits was made. MBOH will issue Carryover Commitments before year end. MBOH staff may grant one or more reasonable extensions of the December 1 deadline for any of the required items upon written request of the Owner/Developer documenting good cause for such extension.

### **E.D. 10% Test**

Section 42 requires that more than 10% of the expected basis in a Project, including land, must be expended by the 10% Cost Certification deadline. MBOH requires that Developers provide an independent third-party CPA audit report, in a format and meeting the requirements established by MBOH, verifying compliance with the 10% test.

Developers must submit the 10% requirements, including the required CPA audit report, other documents and the 10% test underwriting fee by the deadline. Failure to do so will result in the loss of the Credit Award. See Fee Schedule for fees.

**Because MBOH's submission deadline is set at the latest date allowed by federal law, no extensions will be granted. If 10% test information is submitted by the deadline but any forms are incomplete or omitted, a correction fee will be imposed for each incomplete or omitted item.**

At 10% Test, MBOH staff will re-evaluate:

1. The Sources and Uses of funds;
2. Total financing planned for the Project;
3. Proceeds or receipts expected to be generated by the Housing Credits;
4. Reasonableness of the development and operation costs;
5. Projected Rental Income and Operational Expenses;
6. Debt Coverage Ratio;
7. Cost Limitations; and
8. Housing Credits required for financial feasibility of the Project.

Deadline for submission of the required 10% information is the first anniversary of the date on which MBOH executed the Reservation Agreement. ~~This submission deadline will apply to 10% test submissions for Projects awarded Housing Credits in the 2016 or later year allocation rounds.~~ Developers that fail to pay the required fee will be deemed not to have met the 10% Test requirements. Failure to submit certification for 10% documentation or to meet the 10% Test will cause forfeiture of Awarded, reserved or allocated Housing Credits for the Project.

### **F.E. Refreshing Credits**

The MBOH Board may in its sole discretion approve a Credit Refresh for Projects that have been issued a Carryover Commitment by MBOH as provided in Subsection D, above, and that have submitted all required 10% Cost Certification materials and fees, and for which MBOH has approved such 10% Cost Certification, as provided in Subsection E, above.

The amount of Credits reserved through a Credit Refresh shall not exceed: (i) the amount of Credits originally allocated by MBOH for the Project; or (ii) the amount of the maximum Credit Award specified in the Qualified Allocation Plan under which the Credits were originally allocated.

To obtain a Credit Refresh, the Owner must submit a Credit Refresh application to MBOH in the form and according to the requirements provided by staff, along with the Credit Refresh fee as specified in the Fee Schedule. Upon receipt of a complying Credit Refresh Application Form and completion of staff evaluation of such application, the application will be placed on the agenda for consideration at the next MBOH Board meeting. The Owner or its representative should appear at the meeting to answer Board questions, if any, regarding the application and the factors leading to the submission of the application.

The MBOH Board may approve or deny the Credit Refresh, or may defer action on the application pending additional information or compliance with specified conditions. The Board may place any one or more conditions on approval or further consideration of an application.

In considering and making its determination regarding an application, the Board may consider any or all of the following:

1. The diligence, or lack of diligence, by the Development Team, Owner or other Project participant in seeking to complete the development, approval, construction and opening of the Project;
2. Any factors beyond the control of the Development Team, Owner or other Project participant, significantly contributing to the need for the Credit Refresh;
3. The likelihood that the Project will be completed and Placed in Service within a reasonable time, under the circumstances, if the Credit Refresh is approved;
4. The likelihood that the Project will not be completed or Placed in Service if the Credit Refresh is denied;
5. The need for the Project, as determined in the original Application and Award processes;

6. Any significant changes in market conditions or other factors that affect the financial feasibility of or need for the Project; and
7. Any other factor or factors that the Board deems relevant to the determination

Upon approval of an application, the Owner shall return the Credits according to the instructions of MBOH staff and staff shall promptly provide for the re-Reservation of the Credits, as refreshed, to the Owner by providing a Reservation Agreement in accordance with Subsection A, above.

In addition to payment of any applicable fees, the Owner will be required to reimburse MBOH for legal fees and expenses incurred by MBOH in connection with the Credit Refresh Application in accordance with the Applicable QAP.

All requirements of the Applicable QAP and applicable law shall apply to such Reservation and Credits as if such Reservation were the original Reservation of Credits for the Project, including without limitation, Gross Rent Floor Election, Declaration of Restrictive Covenants, Carryover, 10% Test, Placed on Service and Final Allocations/8609 and payment of the Reservation fee and all other applicable fees; provided, that no further submission of executed and recorded Restrictive Covenants, or related survey or title commitment, shall be required if previously submitted in accordance with Applicable QAP requirements, but amendment of such covenants will be required as necessary to conform the covenants to the refreshed credits or to comply with any additional or different requirements in the Applicable QAP.

#### **G.F. Placed in Service**

Placed in Service is defined in Section 1 of this QAP. New Construction and Gut Rehabilitation buildings must be Placed in Service not later than the close of the second calendar year following the calendar year in which the Carryover Commitment is made.

Other Rehabs that are accomplished with residents in place during Rehab can be Placed in Service at the end of the 24 month or shorter period over which the required amount of expenditures are aggregated, as provided in the definition of Placed in Service in Section 1 of this QAP.

#### **H.G. Final Allocations/8609**

Documentation supporting a request for issuance of IRS Form 8609(s) must be submitted to MBOH within 6 months of the last building Placed in Service date. MBOH will not allocate tax credits on IRS Form 8609(s) until a qualified building is Placed in Service. A site visit and file audit by MBOH may be conducted prior to the issuance of the IRS Form 8609(s). Notwithstanding other provisions of this QAP, to obtain issuance of IRS Form 8609(s), the Project must be Placed in Service in substantial accordance with the Project as described and proposed in the Project Application, except to the extent that Substantial Changes have been approved by MBOH or the MBOH Board as provided in the Applicable QAP.

The Final Allocation/8609 underwriting fee must be paid at the time of submission of the request for issuance of IRS Form 8609(s). If the paperwork is not received by MBOH within 6 months of the last building Placed in Service date, a late fee will be assessed. **If 8609 information is submitted by the deadline but any forms are incomplete or omitted, a correction fee will be imposed for each incomplete or omitted item. If a draft 8609 is sent to Developer for review and 8609s must be redone because of Developer/Accountant error, there will be a fee for additional underwriting. See Fee Schedule for fees.**

The request for issuance of IRS Form 8609(s) must include:

1. Certification of required infrared test results (if not previously submitted);

2. The independent third party completed MBOH CPA's audit report and Owner's Statement Forms;
3. Sponsor Certification [section of the UniAppForm](#);
4. The architect's verification that the items for green and amenities listed in the Application as well as provisions of accessibility listed in Section 3 have been incorporated;
5. Certificates of Occupancy (C of O's), if applicable;
6. Copies of all permanent loan [notes](#) and/or grant [contracts documents](#);
7. Copy of partnership/operating agreement;
8. Detailed list of items or costs excluded from eligible basis (for example, parking lot is not in eligible basis);
9. Statement identifying the first year of the credit period, which statement must name the specific year (e.g., 2017);
10. The Final Allocation/8609 underwriting fee; and
11. Documentation evidencing that the site manager and Management Company personnel have completed a Nationally-Recognized LIHTC Compliance Training Company certification course, passing the test; and have attended a class with a Nationally-Recognized LIHTC Compliance Training Company in the last four years.

If the required fee is not submitted, the Project will be deemed not to have met Final Allocation requirements and MBOH will not issue IRS Form 8609(s). MBOH will complete the final credit Allocation evaluation. Typical turn-around time for 8609(s) is 4-8 weeks after submission of all required documentation and the fee. Once the 8609(s) are issued and delivered to the Owner, the bottom half must be completed and signed.

**A copy of each completed and signed 8609 must be sent back to MBOH within ~~90~~ [3 months](#) of issuance. Failure to provide the completed and signed 8609(s) so that they are received by MBOH by the deadline will result in a late fee. If the 8609(s) need to be reissued after completed by MBOH due to Developer error, the MBOH underwriting fee must be paid again. See Fee Schedule.**

## **SECTION 11 - DEVELOPER/APPLICANT RESPONSIBILITIES**

Applicant must respond to a written MBOH request (including but not limited to any email request) within 10 working days. Failure to do so may result in the Application being deemed ineligible for that funding round.

Applicant must proceed according to the timeframe identified in the Implementation Schedule. Adjustments of up to 60 days are acceptable. Any changes in the Implementation Schedule greater than 60 days must be submitted in writing with justification to MBOH within 10 business days of the change. Any changes not reported or not approved may jeopardize the credits. If the schedule is more than 60 days behind and has not been updated as stated above, a late fee will be assessed. See Fee Schedule.

### **A. State Law Requirements**

The Applicant and Development Team must agree to comply with Montana State law requirements (e.g., certificate of contractor registration, workers compensation, unemployment compensation, and payroll taxes).

### **B. Public Notification**

Any public relations actions by a recipient of tax credits involving MBOH funds or tax credits must specifically state that a portion of the funding is from MBOH. This will be included in radio, television, and printed advertisements (excluding rental ads), public notices, and on signs at construction sites, e.g., "Housing Credits allocated by ~~the~~ Montana [Board of Housing](#), Montana Department of Commerce."

## C. Quarterly Reporting

### Status Reports

All Applicants receiving Reservations (Initial Allocations) of credits must provide written status reports for each calendar quarter, beginning with the quarter in which the tax credit Award is made. Status reports will be due on or before January 10<sup>th</sup>, April 10<sup>th</sup>, July 10<sup>th</sup> & October 10<sup>th</sup> until the Applicant receives its 8609(s). The documentation regarding the progress must be development specific, and include such items as planning approval and building permits, firm debt and/or equity financing commitments, construction progress (foundation, framing, rough in, enclosed, drywall, etc., **for each Project building**), and lease up progress. Submission of photos is encouraged.

The following items must be addressed for **each building** on the quarterly report that is submitted to MBOH. If all items are not addressed, the report will be returned and must be corrected and resubmitted. If the resubmitted report is received after the due date the late fee will apply.

1. Updated implementation schedule if more than 60 days behind schedule submitted with application;
2. Advertising for construction bids;
3. Construction bid awards;
4. Pre-construction meeting date;
5. Groundbreaking ceremony date (at least 2 weeks' notice);
6. Future dates of construction/draw meetings;
7. Each phase of construction for **each building including photos** (excavation, foundation framed, etc.);
8. Certificate of Occupancy for **each building** issued in that quarter;
9. During lease up the number of units occupied and number left to full lease up each quarter; and
10. Grand Opening date (at least 2 weeks' notice).

**Owners must provide a copy of the Certificate of Occupancy for each building. The Certificate of Occupancy must be included in the status report covering the period in which it was issued. Failure to provide the reports so that they are received by MBOH by the deadline will result in a late fee. See Fee Schedule.**

### ARRA Reporting

All ARRA reports are due on or before the dates listed in the ARRA Exchange or TCAP Program Agreement.

**Late fees will be assessed for each of the following:**

1. **the financial audit is not received by MBOH by the deadline;**
2. **the annual budget is not received by MBOH by the deadline; or**
3. **the annual insurance binder is not received by MBOH by the deadline.**

**See Fee Schedule for all above fees.**

## D. Changes to Project or Application

The Applicant must notify MBOH in writing at least 30 days before any proposed Substantial Changes in the Project. Proposed Substantial Changes to the Project must be approved by MBOH.

Specific approval by MBOH is required for Substantial Changes. MBOH staff will review requested Substantial Changes and may approve or deny approval of such changes, or may

request Board consideration and determination of the change request. If MBOH staff denies approval of any Project Change, the Applicant may request Board review and approval of the change request. Requests must be submitted to MBOH with proper justification at least 30 days before the change is expected to take place. The Applicant must inform MBOH staff if the proposed change requires immediate or urgent review and approval. MBOH review and approval of changes must be completed prior to the change taking effect. Changes completed without MBOH approval may result in the termination of the Reservation Agreement and/or loss of some or all credits.

Any requested changes submitted requiring MBOH action may incur additional fees. Changes to the Project site, construction of building(s), architectural, engineering, or any on-site review by any member of MBOH will incur additional charges. Fees will be determined based upon the cost of MBOH Staff travel for that purpose.

## **SECTION 12 - COMPLIANCE MONITORING**

Federal law requires state allocating agencies (MBOH) to monitor compliance with provisions of Section 42 of the Internal Revenue Code (26 U.S.C. § 42). In addition, Federal law requires allocating agencies to provide a procedure the agency will follow in monitoring for non-compliance and to inform tax credit recipients (Owners) of procedures and requirements. The Project must comply with the Housing Credit requirements set forth in Section 42 and this QAP for the entire Extended Use Period. Periodic file audits and inspection of units will be performed by MBOH staff as provided in this QAP.

Included in the requirements are procedures for notifying the Internal Revenue Service (IRS) of any non-compliance of which the allocating agency becomes aware. Federal income tax regulations related to Procedures for Monitoring Compliance with Housing Credit Requirements are published in 26 CFR Part 1 and 602.

For complete HC compliance guidance, refer to the MBOH HC Compliance Manual, available at <http://housing.mt.gov/MFCompManual>

### **A. Compliance Fees** (See Fee Schedule for all fees mentioned below)

Developments will incur and must pay to MBOH a compliance monitoring fee to offset the costs for MBOH compliance monitoring. The compliance monitoring fee is payable annually at the time of the Owner's Submission of the Owner's Certificate of Continuing Program Compliance for the time period being submitted.

**A late fee will be assessed if the complete Annual Compliance Package is not received by the deadline.**

Failure to provide corrections on noncompliance so that they are received by the deadline set by MBOH will result in an initial late fee and an additional per-week fee until all required documentation is received by MBOH. A one-time extension may be granted if a written request is submitted to MBOH no later than 10 days prior to the deadline. If an extension is granted and the extension deadline passes without MBOH receipt of the complete documentation, a per-week fee will be imposed until all required documentation is received by MBOH.

The following procedure describes MBOH plans for monitoring compliance on Housing Credit Projects. At minimum, each Project that has been Placed in Service will be subject to the following monitoring requirements:

### **B. Recordkeeping, Record Retention and Data Collection**

#### **1. Recordkeeping**

The Owner of a low-income housing Project must keep records for each building in the Project that shows unit qualifications for each year throughout the term of the Declaration of Restricted Covenants, including the Compliance Period and the Extended Use Period in effect for such Project.

The information must show for each year in the Compliance Period:

- a. The total number of residential rental units in a building (including the number of bedrooms and the size in square feet of each residential rental unit);
- b. The percentage of residential rental units in the building that are qualified units;
- c. The rent charged on each residential rental unit in the building (including any utility allowances and mandatory fees);
- d. HC unit vacancies in the building and information that shows when, and to whom, the next available units were rented. If a unit is left vacant, or in a mixed use Project is rented to a non-qualifying tenant, the Owner must maintain documentation showing a diligent attempt was made to rent the unit to a qualifying tenant;
- e. The tenant income certification of each HC tenant (by unit), including annual certifications for each continuous tenant;
- f. Documentation to support each HC tenant's income certification. This must include a copy of verification(s) of income
- g. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- h. The character and use of any non-residential portion of the building included in the eligible basis of the building, if applicable.

## **2. Records Retention**

Federal regulations require the Owner of a HC Project receiving tax credits to retain the records listed above. The Owner is required to retain such records for at least 6 years after the due date for filing the federal income tax return for that year. Records for the first year of the credit period must be retained for at least 6 years beyond the due date for filing the federal income tax return for the last year of the Compliance Period. Owner should also retain records relating to the amount of credit claimed for the MBOH Tax Credit, including the IRS Form 8609(s) and Schedule A of IRS Form 8609(s).

## **3. Data Collection**

To the extent required by federal law, the Owner will assist the MBOH with meeting federal reporting requirements by collecting and submitting information annually concerning the 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 of all qualified households.

## **C. Owners Certificate of Continuing Program Compliance**

The Owners Certificate of Continuing Program Compliance is required on an annual basis for each property. The certificate must be signed by the Owner and notarized. This statement must be filed with MBOH every year throughout the Extended Use Period. Owners must file annual certifications on the Form provided by MBOH. Substitute forms are not acceptable. Failure to provide an annual certification before the date established by MBOH may trigger an IRS Form 8823.

## **D. Income and Expense Summary**

All property Owners must submit operating income and cost information for the property's latest fiscal period, including a current balance of replacement and operating reserve accounts.

### **E. Submission Deadlines**

The Owners Certificate of Continuing Program Compliance and Tenant Income Certifications (TIC) must be submitted on or before the 25th of the month following the assigned annual period. Federal regulations stipulate there must be no more than 12 months between certifications.

All submissions must be filed through Certification On Line (COL).

### **F. Review by MBOH Staff**

MBOH will review the items listed above for compliance with the requirements of Section 42 of the Code and with the requirements of the MBOH HC program.

### **G. Ownership/Management Changes**

Written Notification of changes to property management companies, managers, site managers, or changes to points of contact must be submitted to MBOH prior to or immediately upon implementation of the change. Changes not received by MBOH prior to change or immediately upon change, or within a 15-day grace period thereafter, will result in an initial late fee and monthly late fees thereafter until written notification is received. If no notification is received MBOH will research and identify the date of the change, and impose late fees based upon such date (and allowing for a 15-day grace period). No Change in Management Company shall be acceptable unless it results in a Qualified Management Company assuming management of the property. Replacement of a Management Company with a company that is not a Qualified Management Company or failure to timely submit such notification to MBOH may trigger issuance of a IRS Form 8823. All management companies, whether in place or being hired, must meet Qualified Management definition.

Subject to the requirements of Section 42 of the Code, the Restrictive Covenants and the Applicable QAP and any other applicable restrictions, the Owner may sell, transfer or exchange the entire Project at any time. No portion of a building to which the Restrictive Covenants apply may be sold to any person/entity unless all of such building is sold to such person/entity. Prior to such sale, transfer or exchange, however, the Owner must notify in writing and obtain the written agreement of any buyer, successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of the Restrictive Covenants, the requirements of Section 42 of the Code and applicable Regulations, and the Applicable QAP. Such written agreement of the buyer, successor or other person acquiring the Project must be in the form required by MBOH, which agreement form is available on the MBOH website. Such form, executed by the buyer, successor or other person acquiring the Project must be submitted to MBOH prior to closing of the sale, transfer or exchange. The Board may void any sale, transfer or exchange of the Project if the buyer, successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code.

### **H. Education Requirements**

Persons responsible for [providing or explaining information for tenant qualification or](#) qualifying tenants and verifying compliance (involved in tenant qualification and compliance) must be certified in LIHTC compliance by one of the Nationally-Recognized LIHTC Compliance Training Companies within the time specified in this section. Property managers and property Management Company personnel must complete a Nationally-Recognized LIHTC Compliance Training Company certification course,



passing the test. Once certification has been obtained, to maintain certification for MBOH purposes, the person must attend a class with a Nationally-Recognized LIHTC Compliance Training Company at least once every four years. For each of the other three years, all property managers and property Management Company personnel should attend annual MBOH compliance training. The property Management Company and site manager for an HC property must be trained and certified before the property is Placed in Service. New site managers hired for existing HC properties must be certified within their first 6 months of employment. New property management companies hired for existing properties must be certified per the above requirements before they assume management of a property. Training requirements must be met to maintain Qualified Management Company status.

Persons responsible for qualifying tenants and verifying compliance (involved in tenant qualification and compliance) must also attend Fair Housing training at least once every four years. The manager for a HC property must complete such training before the property is Placed in Service.

Such Fair Housing training must include and cover the following subjects and requirements:

1. Protected Classes;
2. Accessibility requirements;
3. Reasonable accommodation/modification;
4. Applicant screening;
5. Disparate impact;
6. Domestic violence issues;
7. Occupancy standards;
8. Section 504; and
9. Service Animals.

In the event a Management Company fails to meet the certification or training requirements in this Subsection H, MBOH will notify the Management Company and the Owner of such noncompliance and the date by which such noncompliance must be corrected. If such noncompliance is not corrected by such date, the Owner will be required to pay the applicable fees specified in the Fee Schedule for each week that such noncompliance remains uncorrected.

## **I. Tenant Income Certifications (TIC)**

### **1. Frequency and Form**

Owners must complete the MBOH TIC *for all new move-ins* and file it with MBOH through Certification On Line (COL). Documentation supporting the TIC will not be submitted. MBOH staff will review supporting documentation during file audits. Timely annual Re-certifications (TICs) *for mixed Projects* (with market units) are required must be submitted to MBOH through COL.

The MBOH COL TIC must be used. Any other TIC must be preapproved by MBOH prior to use.

## **J. Student Status Certification**

Student status certifications must be completed *annually* (may be completed on a TIC and marked other-student certification) within the 30 day period *prior to their move-in anniversary date*.

## **K. On-Site Inspections**

MBOH staff (staff) will perform an on-site inspection of each property at least once every three years during the Extended Use Period. Staff will notify the Owner/manager in advance of the inspection.

Staff must inspect and review at least 20% of the tenant files and corresponding units. MBOH will not notify the Project's manager, Owner or other representative of the unit selection before the site inspection. The selected sample may be expanded.

Complete copies of all tenant files for each unit from original lease-up forward must remain within the State of Montana at the location of the rental property or the regional in-state office.

If MBOH determines it is necessary, properties may be inspected on a cycle of more than once every three years. The cost of any additional inspections will be billed to the respective property.

MBOH may schedule on-site inspections at any time with minimal notice.

In event of non-compliance under Section 42 of the Code or the implementing regulations MBOH may be required or elect to undertake additional monitoring. The Owner will take any and all actions reasonably necessary to achieve and maintain compliance. Staff may require the Owner to document correction of non-compliance and/or MBOH may elect to conduct one or more site visit(s) to verify correction of non-compliance and/or require additional Owner or manager training. The Owner will pay a reasonable fee to MBOH for any such additional monitoring activities.

#### **L. Notice to Owner (26 CFR 1.42 (e)(2))**

MBOH must provide prompt written notice to the Owner if MBOH becomes aware of non-compliance. These items include:

- Non-receipt of the certification(s) described in this QAP.
- Inaccessibility of tenant income supporting documentation, rent records, or the property.

In addition, MBOH must provide prompt written notice to the Owner if MBOH discovers by inspection, review, or in some other manner, that the Project is not in compliance with the provisions of Section 42.

#### **M. Correction Period (26 CFR 1.42 (e)(4))**

The Owner will be given a reasonable correction period from the date of non-compliance. If Staff determines that good cause exists, an extension may be granted.

#### **N. Notice to IRS (26 CFR 1.42 (e)(3))**

MBOH must file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance" with the IRS (even if non-compliance has been corrected) no later than 45 days after the end of the correction period, and no earlier than the end of the correction period.

#### **O. Liability (26 CFR 1.42 (g))**

Compliance with the requirements of Section 42 is the responsibility of the Owner of the building for which the credit is allowable. MBOH's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an Owner's noncompliance.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relation to, the compliance monitoring of a low-income housing Project.

### **P. Marketing the Project**

The Owner must put all HC properties into the free State-approved Housing Locator website, MTHousingSearch.com within one year after Placed in Service. If not completed within such time period, MBOH will do so and charge the Owner for the related costs. Properties will be contacted by MTHousingSearch for required information. Using this website meets the criteria for advertising vacant units and provides for broad coverage to those searching for affordable housing in Montana. The Owner must keep the listing active through the Extended Use Period.

### **Q. Qualified Contract Process**

Federal law, in Section 42 of the Code, provides for a state housing credit agency process for early termination of the Extended Use Period for certain Projects and subject to certain requirements. Such process provides for the early termination of the Extended Use Period: (1) if the Owner submits a written request to MBOH in accordance with certain requirements to find a person to acquire the Property, and (2) if MBOH is unable to present within a one-year period a qualified contract for the acquisition of the Property by any person who will continue to operate the low-income portion of the building as a low-income building as defined in Section 42 of the Code. MBOH has adopted certain requirements and procedures applicable to the qualified contract process. These requirements and procedures are set forth in a separate Montana Board of Housing publication entitled Montana Housing Tax Credit Program, Qualified Contract Process and Instructions for Calculation of the Qualified Contract Price (March 2017). MBOH hereby adopts and incorporates herein by reference the Montana Board of Housing, Montana Housing Tax Credit Program, Qualified Contract Process and Instructions for Calculation of the Qualified Contract Price (March 2017) (the "Qualified Contract Process" or "QCP"). The QCP governs eligibility, submission, consideration, determination and other aspects of a request for a qualified contract as provided in Section 42.

MBOH may update and revise the QCP from time to time through the administrative rule adoption process. Any updated or revised version of the QCP adopted as rule will replace and supersede the March 2017 version of the QCP as provided in the adopted rule. The current version of the QCP is available on the MBOH website at [\[insert URL\]](#).

## **SECTION 13 – DISCLAIMER**

MBOH is charged with allocating no more tax credits to any given development than is required to make that development economically feasible. This decision shall be made solely at the discretion of MBOH, but in no way represents or warrants to any Applicant, Investor, lender, or others that the development is feasible or viable.

MBOH reviews documents submitted in connection with this Allocation for its own purposes. In Allocation of the tax credits, MBOH makes no representations to the Owner or anyone else regarding adherence to the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing Montana Housing Tax Credits.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relations to, the Allocation of the Housing Credit.

If it is determined that an Applicant or any member of the Development Team has intentionally submitted false information, a credit Award may be withdrawn or credits may be recaptured and the Applicant or any Applicant involving any related parties or any

individual or entity supplying the false information will be ineligible to apply for credits for the next five years or may be assessed negative points as provided in Section 9.

**A. MBOH Policy on Non-Discrimination**

Montana Board of Housing is an Equal Opportunity organization. All employees who work for MBOH, agree not to discriminate against any client or co-worker based on any protected class under applicable Federal or Montana law. The failure of any employee to comply with this policy may lead to disciplinary action in accordance with applicable employment policies and procedures, including but not limited to immediate termination of employment.

**B. Qualified Allocation Plan Revisions**

This QAP may be amended at any time after compliance with applicable notice, comment and approval requirements.

**C. MBOH Policy on Civil Rights Compliance**

The Owner, Developer, borrowers and any of their employees, agents, or sub-contractors, in doing business with the Montana Board of Housing understand and agree that it is the responsibility of the Owner(s) and such other persons and entities to comply with all applicable Federal Civil Rights laws and regulations, including without limitation applicable provisions of the Fair Housing Laws and Americans With Disabilities Act, and any applicable State and local Civil Rights Laws and regulations. Should requirements, such as design, not be specified by MBOH, it is nonetheless the Owner(s) responsibility to be aware of and comply with all applicable non-discrimination provisions related to any protected class under Federal or Montana law, including design requirements for construction or Rehabilitation, Equal Opportunity in regard to marketing and tenant selection and reasonable accommodation and modification for those tenants covered under the Laws.

## **Housing Credit Forms:**

**All Forms Referenced in this QAP are available at:**

**<http://housing.mt.gov/MFOAP>**

**Applicants, Developers, Owners, Management Companies and all other interested persons submitting Applications, Cost Certifications, Compliance materials, other materials and any fees to MBOH are responsible to review the website and to make such submission on the most current Form, including the most current Fee Schedule available on the MBOH website as of the date of the submission. MBOH may require resubmission of any item if submitted without using or complying with the current Form or without submission of the current fee amount, and late fees may be incurred if the need for such resubmission results in late submission of the correct Form or fee. Please contact MBOH staff with any questions regarding the appropriate or current Form or fee.**