# Qualified Allocation Plan



## NOTICE REGARDING APPLICABLE VERSION OF QAP

This QAP will govern the Montana Board of Housing's ("MBOH") annual award of low-income housing tax credits (housing credit or credit) allocated to Montana by the federal government unless and until subsequent amendment by the MBOH. The annual process for award of housing credits begins with the deadline each year for submission of pre-applications.

The applicable QAP for certain other processes, procedures and fees may be the QAP for an earlier or later year.

Please contact MBOH staff with questions regarding the applicable QAP.

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# I. INTRODUCTION AND APPLICABLE QAP

The Low Income Housing Tax Credit is established under Section 42 of the Internal Revenue Code of 1986 (Section 42). Montana Board of Housing (MBOH) is responsible for allocation of the housing credits.

This qualified allocation plan (QAP) is established by the MBOH Board.

The QAP was released for public comment in June 2026, a public hearing was held on July 13, 2026, and was approved by MBOH at its September 14, 2026 public meeting.

The Governor of Montana, Greg Gianforte, approved the plan as the final QAP on October 2, 2026.

## A. APPLICABLE QAP

The applicable QAP means, unless otherwise specified:
The QAP for the housing credit year for which the application is or was submitted, evaluated and awarded housing credits:

- For purposes of substantive issues relating to award; development evaluation criteria; scoring; selection criteria; and selection standard for such award; including but not limited to underwriting assumptions and limitations unless specifically noted; and
- For purposes of the fee amounts charged for: pre-application; full application; reservation agreement; carryover allocation (initial allocation); 10% cost certification; and final allocation;

The QAP most recently adopted (both approved by the Montana Governor and adopted by the Board as an administrative rule) (adopted) for purposes of: notice and approval of substantial changes to a project; reservation agreement (other than the fee amount); declaration of restrictive covenants; carryover allocation (initial allocation) (other than the fee amount); 10% cost certification (other than the fee amount); final allocation

(other than the fee amount); compliance requirements and compliance audits; any post-award procedures; and fees and fee amounts for post-credit refresh project changes, reservation agreement, declaration of restrictive covenants, carryover allocation (initial allocation), 10% cost certification and final allocation.

The QAP most recently adopted as of the date of submission of a credit refresh application for purposes of: a credit refresh application; consideration and determination regarding a credit request application; payment of MBOH legal fees relating to or required as a result of a credit refresh application or credit refresh; and post-credit refresh project changes, reservation agreement, declaration of restrictive covenants, carryover allocation (initial allocation), 10% cost certification and final allocation (not including fees and fee amounts for such post-award items).

For purposes of application, evaluation, and awarding housing credits with respect to 4% projects, the QAP most recently adopted as of the date of application submission.

### B. REQUIRED FORMS

All forms submitted to MBOH in or as part of the application, development, underwriting, allocation, 10% cost certification, compliance, or other processes under this QAP must be the most current version available on the MBOH website or application platform.

## II. ELIGIBLE APPLICANTS AND LIMITS

Each pre-application and full application will identify an applicant who is and will remain responsible to MBOH for the pre-application and full application.

### A. FIRST HOUSING CREDIT PROJECT MUST BE COMPLETED

An applicant who previously received an award for an in-process project that was its first 9% housing credit project, including projects in which it has an identity of interest, may not receive an award for another housing credit project until the in-process project has been either issued Form(s) 8609 or the credits have been returned/rescinded. 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.

## B. PROJECT AND DEVELOPER MAXIMUMS

The maximum award of 9% LIHTCs for any one project is $8,500,000. MBOH will award no more than $8,500,000 of 9% credits to any one developer in any credit year based on the percentage of the developer fee specified in a written development agreement. This maximum does not apply to 4% applications.

## C. APPLICANT CANNOT EXCEED CUMULATIVE CREDIT MAXIMUM

An applicant is not eligible to submit a pre-application or a full application for 9% credits if an award of credits for the applicant project would cause the applicant's cumulative credit amount to exceed $30 million in total 9% credits (cumulative credit maximum). The cumulative credit maximum applies in addition to the maximum credit award provisions.

For purposes of the cumulative credit maximum:

1. An applicant's cumulative credit amount is the sum of:
    - The applicant's share(s) of the of the ten-year amount of credits requested for the applicant project.
2. 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; in such event, the applicant's share is the same percentage of the project's ten-year credit amount as the greater of the percentage of developer fee the applicant is entitled to receive or the percentage interest that applicant owns in the project.
3. Applicant must provide any documents and information as requested by MBOH for purposes of determining whether an applicant is eligible under this cumulative credit maximum to submit a pre-application or full application.

### D. OTHER DISQUALIFYING CONDITIONS

If any member of the development team has delinquent late fees due and payable to MBOH at any time from submission of pre-application through the award determination meeting, the pre-application or full 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 receive no further consideration.

MBOH may reject any pre-application or full application containing a development team member involved in a request for a qualified contract in Montana.

## III. APPLICATION/AWARD PROCESS

### A. PRE-APPLICATIONS AND FULL APPLICATIONS

#### 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) by submitting a pre-application with all threshold requirements no later than 5:00 p.m. mountain time zone on the applicable deadline.

Only those applicants invited to do so by the Board may submit full Applications for 9% credits. Invited applicants must complete and submit an application with all threshold requirements no later than 5:00 p.m. mountain time zone on the applicable deadline.

#### 4% CREDIT APPLICATIONS

Applicants may apply at any time for an award of 4% credits for projects with tax-exempt financing under the volume limitation on private activity bonds. Applications funded with private activity bonds will be placed in the pipeline when they receive bond resolution approval. The bond resolution will be scheduled on the board agenda considering the planned bond closing date. Applicants can submit a pre-application to

request an inducement resolution, but no fee or mini-market study is required with the pre-application.

If tax exempt private activity bond volume cap is over subscribed Board staff will schedule bond closings irrelevant of bond resolution approval date. Staff will use factors such as readiness to proceed, amount of bonds, available volume cap, etc. If a project is not proceeding on its implementation schedule or if another project is ready to close it may be moved in the line of scheduled closings.

The Board may delay award of a bond resolution to manage the number of units in communities that have received previous awards.

No invitation is required to submit a full application for 4% credits. Applicants must submit a complete full application with all threshold requirements at least eight (8) 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 period.

**COMBINED APPLICATIONS**

Projects with multiple sites will submit a pre-application and full application for each site. Each pre-application and full application must include a separate pre-application attachment and full application proforma (Excel) that provides the project numbers attributable to each site as well as a combined full application proforma (Excel) for the entire project.

Applicants for credits for twinned 4%/9% projects must submit a separate pre-application and full application for 4% and 9% credits. The narrative must include justification regarding the need for both credit types.

All cost and underwriting limitations in this QAP will be applied for twinned 4%/9% and multiple site projects on a separate and/or combined basis.

Projects with multiple sites and twinned 4%/9% will submit all threshold items below on a combined basis with the following exceptions:

- Pre-application attachments and proforma (Excel)s will be submitted for multiple sites, 4% and 9% projects separately, as well as on a combined basis.
- If any threshold items have identical document, only submit one, but if they have separate documents, submit all documents and label accordingly.
- Identical documents and full application proforma (Excel) will be included in the site with the most units or for twinned 4%/9% in the 9% application.

### PROJECT CHANGES FROM PRE-APPLICATION TO FULL APPLICATION

Applicants may not change the general project location (city/town), type (e.g., family or elderly), applicant and developer specified in the pre-application in any resulting full application unless approved by MBOH. MBOH will consider other information in the pre-application (e.g., cost information, number of units, unit sizes, income targeting, rents, hard and soft loan sources) to be the applicant's best estimates, which may be changed in the full application.

### PUBLIC COMMENTS FOR ALL PROJECT TYPES

Written public comment on a project will be accepted up to two weeks before the meeting a project is being considered. If comments are received in the two weeks prior to the meeting, they will be directed to make oral comments at the meeting.

## B. INCOMPLETE PRE-APPLICATION OR FULL APPLICATION

Applicants must respond to a written MBOH request (including but not limited to any email request) within 10 working days, unless otherwise specified. Failure to respond within the specified time may result in the application being ineligible.

MBOH staff may ask an applicant to submit additional information for either a pre-application or full application that has an incomplete or missing threshold requirement, or a threshold requirement submission not meeting industry standards. Failure to submit the information and pay the applicable fee within the specified time will result in MBOH not considering the application.

## C. FIRST AWARD ROUND

The following first round awards deadlines and events for 9% applications are applicable in each calendar year:

- Pre-application submission — 1st Monday in April
- Applicant presentations/Board invitations to apply — May Board Meeting
- Full application submission — First Monday in August
- Award determination — October or November Board Meeting

In the event that any deadline falls upon a weekend, or holiday observed by Montana State government, the submission deadline will be the next business day thereafter.

## D. SECOND AWARD ROUND (IF ANY)

The Board may decide to hold a second award round for 9% applications that is any one or a combination of the following:

- Limited to those applicants that submitted a pre-application in the first award round, but not invited to submit a full application (a “Semi-Open Round”);
- Limited to those applicants invited to submit a full application, but not awarded housing credits in the first award round (a “Closed Round”); or
- Open to submission of pre-applications by any interested party (an “Open Round”).

MBOH will announce such round on its website, including all applicable submission requirements and deadlines/dates.

## E. CHANGES AND WAIVERS

MBOH may extend or change any of the deadlines and dates in the QAP by posting on MBOH's website. The Board, in its discretion, may waive any requirement of this QAP if it determines such waiver to be in the best interests of MBOH or the credit program.

## F. BOARD CONSIDERATION AND DETERMINATION

### PRE-APPLICATION

MBOH staff will present pre-application's for 9% credits at the board meeting in the month specified or established in accordance with the QAP schedule. The Board will provide an opportunity for applicants to present and for public comments on proposed projects and applications. The Board may ask questions of applicants and discuss proposed projects, but such questions and discussion 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 comments will include in-person comments, live conference call comments and written comments. Comments are subject to reasonable limitations by the chair.

There will be no formal evaluation or scoring of pre applications beyond assuring that the pre-application threshold requirements are met.

Pre-applications generally should reflect projects that will meet all QAP requirements (including the development evaluation criteria) and credits will not be awarded for full applications that fail to meet QAP requirements or that change the general project location (city/town), type (e.g., family or elderly), or applicant and developer specified in the pre-application (subject to any waiver approved by the Board).

However, all pre-application meeting the pre-application threshold requirements will be presented to the Board, along with staff comments identifying any areas in which the pre-

application proposal fails to meet other QAP requirements (including the development evaluation criteria).

Pre-applications will not be refused further consideration based solely upon divergence from QAP requirements other than pre-application threshold requirements, but the Board may decline to consider any pre-application for invitation to submit a full application if the Board determines the project cannot or is unlikely to meet any QAP requirements at full application.

After considering the pre-application, presentations, questions, answers and discussion, the Board will select up to eight projects to submit applications according to the selection standard and based upon consideration of any of the selection criteria permitted to be considered for purposes of an award under this QAP, but no formal evaluation or scoring of pre-applications will be done or considered. The Board may invite additional projects if there is an increase in housing credits, or other conditions allow for additional projects to be selected for award.

**AWARD**

At the award determination meeting, MBOH staff will provide information for 9% project applications. Applicants should be available to the Board to answer questions regarding their respective applications, but there will be no applicant presentations. MBOH will provide an opportunity for public comments on proposed projects and applications. Applicants will 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 tribal projects, small rural projects and other projects in separate groupings. In considering applications for award, the Board may first consider tribal or small rural projects. The Board may, but is not required by this provision, to select any tribal or small rural project for an award. After any such initial consideration, the Board will consider award of remaining credits to any applicant. The Board will select applications to receive an award of 9% credits, if any, in

accordance with the award determination process set forth in Section VII (Award Determination).

## G. REMAINING CREDITS

If the remaining amount of available credits is insufficient to fully fund an additional project, before awarding a project in an amount less than requested by the applicant (except for any de minimis reduction, no more than 5%) the Board may:

- Prioritize the remaining projects for an award from the remaining credits.
- Make any remaining credits available in a future cycle.
- Increase the amount of housing credits reserved for a previously awarded project based upon the project's application for an increase submitted under subsection K.
- Elect to award less than all available credits.
- Elect to not award any such remaining credits.
- Adopt any other reasonable option permitted under this QAP.

If the Board prioritizes remaining projects for an award, the first priority project for an award will be allowed 30 days to re-submit its application resized to the amount of credits remaining available. If MBOH determines that the development is financially feasible, it will enter into a reservation agreement. If the first or a later priority project fails to submit or is not feasible, MBOH will invite the next priority project(s) to submit a resized application.

## H. FORWARD COMMITMENTS

MBOH does not commit credits from future years, except:

- 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.
- 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 MBOH.

The applicant must submit a pre-application, and the Board must invite the applicant to submit an application, before making an award. The application must meet all QAP requirements.

## I. AMOUNT OF HOUSING CREDIT ALLOCATION

An award of housing credits under this QAP will be limited to the amount of credits that MBOH 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:

- The sources and uses of funds and the total financing planned for the project.
- Grants made with federal funds directly for a project, which will reduce basis.
- Proceeds expected to be generated by the housing credits.
- The reasonableness of the development and operational costs of the project.

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.

## J. MAXIMUM BOND AMOUNT FOR 4% CREDIT PROJECTS

If tax exempt private activity bond volume cap is oversubscribed Board staff will work with projects to reduce the amount of private activity bond cap used by the project. Factors such as the 25% test and financial needs of the project will be considered. Staff will work to award no more than 45% of total project costs if possible.

Staff may delay award of a bond resolution to manage the amount of units into communities that have received previous awards.

### K. REQUEST FOR INCREASE IN AMOUNT OF CREDIT RESERVATION

MBOH may use returned or unreserved housing credits to increase the amount reserved for a project after making the first round awards based on the following factors:

- The nature and amount of additional costs, loss of anticipated funding sources or other gap in available project funding.
- Significant factors leading to the need for additional credits.
- Availability and applicant's use of measures to mitigate or obtain alternative funding sources to address any funding gap.
- The need for the additional credits to make the project feasible.
- Availability of returned or unreserved credits.
- 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.

An owner seeking an increase must submit a written request at least 30 days before the Board meeting at which the owner seeks consideration. The request must include new financials, supporting documentation for the cost increases (e.g., higher than expected bids or material costs), and supporting documentation addressing each of the above-specified factors. Staff will present a recommendation at a later MBOH Board meeting for consideration. MBOH will not approve any increase beyond that necessary to make the project feasible.

### L. CREDIT REFRESH REQUEST

An owner may apply and the Board will consider a credit refresh as provided in Section X.

## IV. APPLICABLE FEES

The amount(s) of and due dates for all fees required or imposed by this QAP are as specified in the most current MBOH Housing Credit Fee Schedule (Fee Schedule). All

fee amounts may be adjusted by MBOH at any time and are nonrefundable unless otherwise specified.

The developer/owner of any project awarded credits will be required to reimburse MBOH for legal fees and other expenses incurred by MBOH with respect to any non-standard request, change, document, or other matters relating to 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.

## V. SET ASIDES

### A. NONPROFIT

Unless otherwise specifically provided in the Board's award resolution, MBOH will meet the 10% nonprofit set-aside requirement with all awards to projects involving a qualified nonprofit organization. MBOH will not award more than 90% of the state's credit ceiling to projects not involving nonprofit. By submitting an application involving a nonprofit, the applicant consents to designation of such project as the project receiving the nonprofit set aside.

### B. CORRECTIVE AWARD

Such portion of the state's annual federally-allocated credit ceiling is reserved and set-aside as is necessary for any project 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 credits to such project.
- A final order of a court of competent jurisdiction invalidates or sets aside an award 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 credits.

- 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. The amount of any corrective award shall be as specified by the court, or if no award amount is specified by the court, as determined by MBOH in accordance with this QAP. The corrective award set aside shall be funded first from returned or unreserved credits from a prior year. Awards under this corrective action set aside may be made from returned or unreserved 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.

If the court orders MBOH to award credits to any project under this set-aside, the project must submit an updated application so MBOH can verify that the amount of credits requested or some other amount is justified, unless otherwise ordered by the court.

## C. GENERAL RULES REGARDING SET ASIDES

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

In the event there are insufficient credits available to fully fund all set aside categories, the respective categories shall be funded in the following order of priority: (1) nonprofit; and (2) corrective award.

# VI. THRESHOLD REQUIREMENTS

Threshold requirements are mandatory for all pre-applications and full applications. Except as provided, pre-applications and full applications received not meeting all threshold requirements or other requirements of this QAP will receive no further consideration.

Pre-application and full application threshold requirement submissions must be complete and must meet industry standards. As provided in III.B, MBOH staff may ask an applicant to submit additional information for any incomplete or missing item or any item not meeting industry standards. Failure to submit the information and pay the applicable fee within the specified time will result in MBOH not considering the application further.

All projects must have an additional 35 years of affordability beyond the initial 15-year compliance period (total extended use period of 50 years).

## A. MATERIALS AND INFORMATION SUBMITTED

Submit all requirements using the application platform. A link to the platform can be found on MBOH's website. A pre-qualification intake form should be submitted two weeks prior to deadline.

It is expected that all submitted materials are 508 ADA compliant (to the best of your ability).

### 1. PRE-APPLICATION

Pre-Application must include:

- Fee for 9% credit projects
- Narrative
- Attachment (Excel)

- Mini-market study & summary sheet for 9% credit projects (MBOH will accept full market studies, but they are not required at pre-Application)

## 2. FULL APPLICATION

Full applications must include:

1. Application Fee
2. Cover Letter: summarize the project, using template in platform is highly recommended to meet 508 ADA requirements.
    a. The project name must be selected by application. This name may be changed only upon prior approval of MBOH staff.
3. Proforma (Excel)
    a. Fully complete all tabs needed for housing credits.
    b. Include a fully completed proforma (Excel) for each project.
    c. A separate proforma (Excel) for the 4% and 9% portions of a twinned project or if multiple sites for each site.
    d. For twinned projects or multiple site projects, also include a proforma (Excel) for the entire project on a combined basis.
    e. Include combined proforma (Excel) in the 9% side of a twinned project and if a multiple site project, include in the site with most units.
4. Land or Property Control
5. Zoning
    a. Documentation from the city or county affirmatively stating how zoning requirements are met or addressed.
    b. Acquisition/rehabilitation and rehabilitation projects may meet this requirement by providing documentation that the project will not require a change in zoning requirements.
6. Utilities
    a. Letter or email from providers verifying:
        - Utilities are or will be available to the property.
        - The provider has the capacity to handle the load to be added by the project.

- Present proximity of utilities to the project location.

b. Documentation must address water, sewer, electricity, and as applicable, gas, propane, and garbage pickup.
c. Acquisition/rehabilitation and rehabilitation projects need only provide a letter or email from the utility provider documenting the expected utility load and the providers' ability to meet such additional load.
d. Documentation must not be older than 18 months from application date.
e. MBOH staff may require the applicant to provide updated documentation.

7. Preliminary Financing Letter
   a. Letter from lender stating the proposed loan terms and conditions.
   b. The letter must formally express interest in financing the project as represented in the application.
8. Equity Letter: letter of interest with the anticipated price based on the market at time of the application.
9. Novogradac Rent Lmits: provide Novogradac rent and income calculator results for the project (Novogradac calculator available on MBOH's website).
10. Utility Schedule: copy of schedule used in proforma (Excel).
11. Qualified Management Company Agreement
    a. Provide a copy of the written agreement, evidence of the company's commitment to provide management services.
    b. Upon written notice from MBOH that the management company 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.
12. Management Education Certifications: documentation that at least one member of the management company and one other member of the development team who is directly and actively involved with the project has been trained by a nationally recognized LIHTC compliance training company within the preceding four years.
13. Full Market Study
    a. Prepared and signed by a disinterested third-party analyst.

b. 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 full market study requirements in the MBOH mini/full market study requirements available on the MBOH website or application platform.
c. Documents the following targets:
    - Vacancy rate is at or below 7%.
    - Absorption rate is less than five months.
    - Proposed project rents are at least 10% below adjusted market rents.

14. Market Analyst Certification Form
15. Market Study Summary Sheet
16. Appraisal/CMA
    a. Meets the requirements of the appraisal checklist available on the MBOH website or application platform; CMA may be accepted when an appraisal is not feasible.
    b. Completed appraisal checklist.
    c. Appraisal/CMA will be prepared by an independent professional entity that is qualified to prepare the report.
    d. A CMA or appraisal is not required to be submitted for property located within the exterior boundaries of an Indian reservation. To qualify for this exception, the application must include documentation demonstrating that the property is located within the exterior boundaries of an Indian reservation.
17. Site Plan
18. Preliminary Floor Plan: Design Professional's preliminary floor plan and elevations/photos of existing properties for the Project.
19. Parking Plan & Laundry Services
    a. Short narrative that describes reasoning for providing number of parking spaces, and adherence to parking requirements of local zoning and ADA requirements.

b. Short narrative that describes laundry services being provided.

20. Legal Ownership Entity and Development Team
    a. Organizational document of the entity that will have legal ownership of the project from the state where it is organized or other documents acceptable to Montana Housing if available at application. This formal document will be required if the project is selected.
    b. Organizational Owners Chart
       Include the following:
       - Legal name of entities at all ownership levels.
       - Type of entity (LLC, LP, LLP, etc.).
       - State in which entity is organized.
       - Principal of each entity.
       - Ownership percentage of each entity and principal.
    c. Signature block for project owner entity(ies) in a WORD document.
    d. The application must list all affordable housing, including tax credit projects in Montana or any other state developed, owned, managed, or consulted on by applicant and any member of the development team, whether such projects were successfully completed.
    e. All development team members must sign, and the application must include the completed and signed information release form, providing consent to the release of information by other third parties.
21. Broadband
    a. Explain how the project will meet the broadband requirements.
    b. Infrastructure installation is required for all new construction and rehabilitation projects. If this requirement is unfeasible the applicant must submit a waiver request. This request must contain justification and detailed documentation.
22. Narrative addressing each of the development evaluation criteria in Section VII and providing a specific explanation demonstrating how the application meets each of these criteria.
    a. Documentation of each of the following development evaluation criteria items (if applicable):

- Project-based rental subsidy contract or other document(s).
- Location in small town or tribal area.
- Local community revitalization or similar plan (affordable housing stock and/or QCT).
- State, tribal and/or federal historic preservation designations.
- Local community input.
- Location in QCT.
- Local entity commitment (communications/relationships).
- Design requirements (applicable certifications).
- Any additional development evaluation criteria requiring documentation.

b. Narrative references to the market study must cite the specific page and paragraph of the market study.

23. Public Housing Authority Waiting List: documentation of the number of households on the current housing choice voucher waiting list from the local public housing authority and/or the contracted HCV provider in which the project is located.
24. Public Notice:
    a. Public notice to the community in which the project is located must be provided. Acceptable forms of public notice include: box advertisement in newspaper, attendance at neighborhood community meetings, social media post in three community group pages, or other forms of notice acceptable to MBOH.
    b. The notice form chosen must be released within 90 days of the full application due date.
    c. Public notice information must include:

(Name of Developer, address, telephone number), a (for-profit/nonprofit) 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; FAX (406) 841-2841, or electronically at housing.mt.gov/Contact.

25. Sponsor Application Indemnification & Certification Form
26. Nonprofit Set-aside

    Applications seeking to qualify for the nonprofit set aside must provide:

    - A copy of the IRS determination letter documenting such organization's 501(c)(3) or (4) status.
    - 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.
    - Documentation that one of the exempt purposes of the organization includes the fostering of low-income housing.
27. Developer Fee Agreement: If the project has co-developers or a consultant, provide a copy of the executed developer fee agreement, consultant fee agreement, or other documentation demonstrating how development/consulting fees will be split or paid.
28. Release of Information Form: For projects that include a developer with no previous history with the Montana Housing Credit Program.
29. QCT / DDA Map, if applicable
30. Discretionary Basis Boost: Explanation and justification for a request for discretionary basis boost, if applicable.

31. Elderly Exemption: If the project is an elderly property, specify which exemption for housing for older people will apply.
32. CNA:
    a. A capital needs assessment (CNA) for rehabilitation applications on the USDA Rural Development Capital Needs Assessment template or similar form.
    b. A minimum of a 15-year projection for all capital needs that will be replaced, refinished, repaired, upgraded, or otherwise rehabilitated.
    c. Detailed narrative explaining the scope, details, and expectations of the rehabilitation.
    d. All items will be listed and identified by unit number.
    e. The CNA must be less than one year old as of the date of application submission or include an update within the most recent six months.
    f. CNA will be prepared by a professional entity that is qualified to conduct the assessment.
33. Relocation Plan: Applications proposing rehabilitation or replacement of existing units must include a preliminary relocation plan addressing the logistics of moving tenants out of their units and providing temporary housing during the rehabilitation or replacement, the probable length of time tenants will be out of their units and returning tenants to their units or replacement units upon completion of the rehabilitation or replacement.
34. Property Tax Exemption
    a. 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 narrative of intent to request the exemption.
    b. If the application does not include such documentation, MBOH will underwrite the project as if no exemption was or will be received.
35. Operating Reserve Letter: If the operating reserve requirement is not met, an acceptable third-party source document is required.

36. Eventual Homeownership: For projects targeted for eventual homeownership, provide the documents and information specified in the eventual home ownership section.

## B. OTHER REQUIREMENTS

In addition to applications or projects failing to meet other requirements, MBOH will return and will not consider for an award of credits:

1. Projects for which the market study and other available market information fails to demonstrate adequate market need within the proposed community.
2. Projects that are not financially feasible based upon MBOH underwriting standards.
3. Projects with no participation by an entity with a demonstrated track record of quality experience in completed development or management of tax credit projects. In evaluating the track record of participating entities, MBOH will consider:
   - Whether the applicant, owner, developer, general partner, management company, and consultant have developed and operated housing projects with the highest quality either in Montana or another state.
   - Amount of active local community participation used to develop projects.
   - The compliance track record and specialized training of the proposed management company. New developers may meet this requirement through a partner who is an experienced developer.
4. No one who is actively involved in the actual construction process has experience with cold weather development and construction (defined as one or more projects located above the 40 degrees north parallel), as reported on the MBOH Cold Weather Experience Form.
5. If the applicant or any member of the applicant's development team is debarred from federal programs or Federal Home Loan Bank, prohibited from applying by another state housing agency for disciplinary reasons, or based on the "Disqualification" section in Appendix D.

# VII. DEVELOPMENT EVALUATION CRITERIA AND SELECTION

## A. BOARD CONSIDERATION, FACTORS AND DEVELOPMENT EVALUATION CRITERIA

The development evaluation criteria are only one of several considerations the MBOH Board takes into account and does not control the selection of projects that will receive an award of credits. For purposes of this QAP and selections, awards and allocations, the selection criteria include all the requirements, considerations, factors, limitations, development evaluation criteria, set asides, priorities, preferences and data set forth in this QAP and all federal requirements.

In addition to development evaluation criteria in the following subsections, the MBOH Board may consider the following factors in selecting applications:

- Geographical distribution.
- Rural or urban location.
- QCT or DDA location.
- Opportunity zone location.
- Overall income levels targeted by the projects (including but not limited to deeper targeting of income levels).
- Need for affordable housing in the community (including but not limited to current vacancy rates).
- Rehabilitation of existing low-income housing stock.
- Sustainable energy savings initiatives.
- Financial and operational ability of the applicant to fund, complete and maintain the project through the extended use period.
- Past performance of an applicant in initiating and completing tax credit projects.
- Cost of construction, land and utilities, including but not limited to costs/credits per square foot/unit.
- The project is being developed in or near a historic downtown neighborhood.

- Frequency of awards in the respective areas where projects are located considering how additional supply will affect the market.
- Preservation of project rental assistance units in or to an existing project.
- Augmentation and/or sources of funds.

The MBOH Board gives preference to projects serving the lowest-income tenants through a combination of income targeting requirements and application evaluation processes. “Low-income” households eligible for LIHTC units are households earning up to 80% of AMI.

This QAP gives preference to the lowest-income tenants by requiring that all projects meet not only the federally-required minimum set aside requirements (*i.e.*,20-50, 40-60 or average income), but also meet the considerably lower overall income targeting thresholds of weighted average targeted income of 53% AMI or below for 9% projects using the 20-50 or 60-40 test, or 60% AMI or below for 4% projects or projects using the average income set aside.

This approach gives preference to the lowest-income tenants while recognizing that the extent of targeting units to the lowest income levels is necessarily constrained by available financial resources for the project.

A blend of units up to 80% AMI typically is required for project financial feasibility. In evaluating and selecting projects for an award of credits, the MBOH Board will specifically consider and compare the extent to which projects would serve the lowest-income tenants.

Such consideration and comparisons are not absolute or controlling with respect to project selection for credit awards, as this factor must be considered and balanced together with other criteria and considerations under this QAP.

## DEVELOPMENT EVALUATION CRITERIA

### 1. LOWER INCOME TENANTS

All projects must meet the federally required minimum set aside requirements, *i.e.*, the 20-50 test, 40-60 test or average income (AI) and related MBOH procedures, restrictions and requirements.

In addition, applications must comply with one of the subsections below.

### INCOME AND RENT LEVEL TARGETING

Projects applying for 9% credits with any minimum set aside (i.e., 20-50 or 40-60 or average income) will reflect a weighted average income targeted at 53% or below.

Projects applying for 4% credits will be allowed to have a weighted average income target of 60% or below. Average income will not be allowed unless 100% of the units are restricted.

Rents at 20% are allowed to income qualify up to 29%, 30% are allowed to income qualify up to 39%; 40% are allowed to income qualify to 49% AMI; 50% are allowed to income qualify to 55% AMI (40-60 election must apply). MBOH will calculate average income targeting percentage based on the area median income rent maximum allowed.

If the project has a manager's unit, it will be considered a 60% unit and calculated as such.

### PROJECT-BASED RENTAL SUBSIDY

The project has existing or committed 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.

## 2. PROJECT CHARACTERISTICS

Applications must comply with one of the subsections below.

### AMENITIES

For purposes of this subsection, an amenity is a grocery store (convenience store does not count) or medical services appropriate and available to all prospective tenants (e.g., hospital, doctor offices, etc.). An application will qualify with respect to an amenity if one of the following applies:

- The project is located within 1½ miles of the amenity.
- Public or contracted transportation (not including taxi or school bus service) is reasonably available to the amenity (i.e., the project is located within ¼ mile of fixed bus stop or on a same day call basis, the applicant submits a letter from a transportation provider committing to establish such service.
- The amenity is available via a no-charge delivery service to the project location (all distances must be as specified in the project's market study).

* For scattered site projects, all site locations must meet the criteria.

### SMALL TOWN/TRIBAL DESIGNATED AREA

The site is located in a municipality with a population of less than 10,000 according to the population figures provided by the 2020 American Community Survey (small town); or the site is located in a tribal designated area which is defined as an area of land within an Indian reservation that is held and governed by a federally recognized Native American tribal nation (Tribal Area).

### AFFORDABLE HOUSING STOCK

The application proposes the preservation of existing affordable housing stock, including as part of a local (not national, state or regional) community revitalization plan or similar plan.

### HISTORIC PRESERVATION

The application proposes the adaptive re-use and/or rehabilitation of buildings with local, state, tribal and/or federal historic preservation designations.

## 3. LOCAL INVOLVEMENT

Applications must comply with one of the subsections below.

### COMMUNITY INPUT

Application includes documentation of at least one of the following forms of local community input, as shown by evidence provided in the application:

- Local neighborhood meetings held expressly for this application.
- Local charrettes held expressly for this application with supporting documents, concept drawings, and input from local community.
- Other appropriate forms of local community input specifically designed to gather local community input for this application.
- City or county commission meeting.

To qualify the event must meet the following criteria:

- Not 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.
- Application includes minutes, copies of any written or electronic comments received, and outreach documentation efforts.
- Held within 6 months before the application deadline.

### QUALIFIED CENSUS TRACT/LOCAL COMMUNITY REVITALIZATION PLAN

The project is in a qualified census tract (QCT), 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.

### COMMUNICATION/RELATIONSHIPS

The application includes a commitment by a local entity to provide at least one of the following:

- Screening and referring of individuals as prospective tenants.
- On-site service coordination to project tenants.
- Donation of land or sale at a reduced price.
- Funds to develop infrastructure or for other uses.
- Significant waivers of local government fees.
- Other forms of significant monetary or in-kind support.

For purposes of this 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 an office in the project locality.

## 4. DESIGN REQUIREMENTS

Refer to the design appendix for applicable design requirements. Any requirement deemed mandatory is required for all projects.

## 5. TENANT POPULATIONS WITH SPECIAL HOUSING NEEDS

Applications must comply with one of the subsections below.

### FAMILY PROJECTS

An application for a family project will commit to targeting at least 10% of its units for at least one of the following identified needs:

- Individuals with children or large families (three or more bedrooms).
- Meeting Section 504 fully accessible requirements (other than features for persons with hearing or visual disabilities, which can be limited to 5% of units).

- Targeted as permanent supportive housing for persons with disabilities (application must describe the strategy that will be used to market available units to disabled persons throughout the extended use period).
- Targeted to veterans, victims of domestic violence, or youth aging out of foster care.

Units may be counted more than once or in more than one category.

For permanent supportive housing, owners and management companies will:

- Not give a preference based on disability type (actual or perceived) or being a client of a particular service provider.
- Use standard leases with the same rights available to and responsibilities expected of other households, including duration of tenancy (cannot be transitional).
- Ensure participation in any supportive services is entirely voluntary (not a formal or implied condition of occupancy).
- Not segregate units within the project by tenant need category.
- Not engage in medical, therapeutic, or other activities regulated by the U.S. Centers for Medicare & Medicaid Services with respect to the tenants.

### ELDERLY PROJECTS

Applications for a new construction elderly property will meet Section 504 fully accessible requirements for 20% of units (other than features for persons with hearing or visual disabilities, which can be limited to 10% of units).

## B. AWARD DETERMINATION

The MBOH Board will select applications to receive an award that the Board determines best meets the most pressing affordable housing needs of low-income people in Montana, taking into consideration:

- All of the requirements, considerations, factors, limitations, development evaluation criteria, set asides, priorities and data (including without limitation the following data provided to the Board for purposes of the award determination meeting:

  - Statistical data regarding previous credit allocations in the MBOH Statistical Data Form.
  - Other available data, determined by MBOH staff to be appropriate, useful and timely, relating to need for affordable housing in various locations and of various types across the state) set forth in this QAP and all federal requirements (together referred to in this QAP as the “Selection Criteria”).
- All other information provided to the MBOH Board regarding the applicant projects.

The development evaluation criteria are only one of several considerations considered by the MBOH Board and does not independently determine the selection of projects that will receive an award of housing credits.

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 public.

### MEDIA ANNOUNCEMENTS

The Montana Department of Commerce will issue an initial press release announcing all awardees. Commerce kindly asks recipients to refrain from issuing their own news releases, social media posts or public announcements until after Commerce has made its official announcement. This ensures a coordinated and consistent message regarding the awards. Once the initial press release has been issued, awardees are welcome to share their news. Commerce appreciates being tagged on Facebook or LinkedIn social posts by awardees.

## VIII. UNDERWRITING ASSUMPTIONS AND LIMITATIONS

These underwriting assumptions will be used at application, 10% cost certification and final cost certification.

## A. PRO-FORMA COMPONENTS

### 1. 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 location. Staff may require the applicant to provide additional justification and documentation.

### 2. DEBT COVERAGE RATIO

The ratio of net operating income (rental income less operating expenses, not including expenses for amortization, depreciation or mortgage related interest, and reserve payments) to foreclosable, currently amortizing debt service obligations (debt coverage ratio or DCR) should be between:

- 1.15 and 1.35 in the first year of normal operation if projected to trend upward.
- 1.10 and 1.50 during the entire first 15 years of normal operation if projected to trend downward.

Applications must justify DCRs outside these ranges in a narrative. 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, is above the ranges specified above without acceptable justification, MBOH will reduce the amount of credits requested or the rent levels proposed.

### 3. TOTAL EXPENSE COVERAGE RATIO

MBOH will consider, on a case-by-case basis, projects which materially deviate from a 1.10 expense coverage ratio.

### 4. OPERATING RESERVES

Owners must establish and maintain minimum operating reserves 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. Using an acceptable third-party source, this requirement can be met by cash, bond, letter of credit from a financial institution, or a developer guarantee that a syndicator has accepted responsibility for a reserve.

Project replacement and operating reserves and reserve accounts required by applicable law, the QAP or the LURA must be retained by the project (and transferred to the new owner as applicable) in or as part of any sale, transfer or exchange of the project. The owner shall not withdraw or retain any such reserves or reserve accounts in or as part of any sale, transfer or exchange of the project and the Board may void any sale, transfer or exchange of the project that violates this requirement.

## 5. REPLACEMENT RESERVES

Owners must contribute replacement reserves in an amount equal to at least $350 per unit 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, must be included in the limited partnership or operating agreement.

Project replacement and operating reserves and reserve accounts required by applicable law, the QAP or the LURA must be retained by the project (and transferred to the new owner as applicable) in or as part of any sale, transfer or exchange of the project. The owner shall not withdraw or retain any such reserves or reserve accounts in or as part of any sale, transfer or exchange of the project and the Board may void any sale, transfer or exchange of the project that violates this requirement.

## 6. UTILITY ALLOWANCES

The MBOH approved utility allowances are the following:

- Montana Department of Commerce Section 8 Utility Allowances.

- USDA Rural Development.
- HUD Utility Schedule Model (HUSM).
- Energy Consumption Model (ECM).

Refer to the ECM Form on the MBOH website for the most current checklist of required items.

Projects may use their own calculated HUSM or ECM from pre-application to placed in service, but as of placed in service must have obtained MBOH approval of HUSM or ECM according to the following timelines. Requests for approval of HUSM or ECM allowance amounts and annual approval requests must be submitted to MBOH at least 90 days before the projected start date or anniversary approval date. Numbers used for approval request submission must not be more than 30 days old at time of submission. Utility allowances provided by utility providers will not be considered or accepted.

## 7. ADDITIONAL UNDERWRITING ASSUMPTIONS

MBOH will use the following underwriting assumptions for underwriting all applications.

a. 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.
b. Rent trending: 2%.
c. Expense trending: 3%.
d. Reserves trending: as proposed in application but not to exceed 3%.
e. Operating expenses per unit: $3,000-$8,000 annually.

## 8. SOURCES AND USES CERTIFICATION

Applicants must certify that they have disclosed all a project's sources and uses, as well as its total financing, and must disclose to MBOH in writing any planned changes in sources until MBOH issues Form(s) 8609.

## B. SUBSTANTIAL REHABILITATION

All acquisition/rehabilitation and rehabilitation projects must meet the following minimum expenditure standard (substantial rehabilitation standard). Newer construction acquisition/rehabilitation projects may apply for a staff discretionary waiver for a lesser per unit amount. The substantial rehabilitation standard is expenditures of:

- $50,000 of hard cost per unit for 9% & 4% projects.

Rehabilitation projects must meet all requirements of the CNA and the application must also include a list of items in each unit that will be replaced, refinished, repaired, upgraded, or otherwise rehabilitated.

## C. EVENTUAL HOMEOWNERSHIP

Some or all project units may be converted to homeownership after the end of the 15-year compliance period, subject to the following requirements, the provisions of the code and MBOH approval. As these projects will be rental housing for a minimum of 15 years, they will be underwritten as a rental project according to the same underwriting criteria as full-term projects.

The following conditions apply and must be met as a condition of MBOH approval of homeownership conversion and release of converted units or property from any applicable LURA:

1. Intention to convert must be expressed in the housing credit application.
2. Only 100% housing credit projects are eligible.
3. The units must be single family detached, townhouse, or condominium units for which an instrument conveying title to the homebuyer can be recorded.
4. Units must be marketed solely to the existing rental resident.
5. Units that are not sold to the existing rental resident must remain rental units subject to the LURA for its full term.
6. Prior to sale or transfer of units, the owner must submit a comprehensive and detailed plan for the homeownership conversion that includes or provides for at least the following:

- Terms of sale and transfer.
- Tenant eligibility requirements for purchase or transfer of unit, including minimum length of tenancy in rental unit to be eligible for purchase or transfer.
- Restrictions on any subsequent sales or transfers. i.e eligibility of buyers, limits on equity transfer etc. A revised LURA may be needed to ensure compliance.
- Mandatory homeownership classes for potential homeowners.
- Repair or replacement of heating system, water heater, roof and other major building systems prior to sale or transfer.
- Post-transfer repair and maintenance of units, including:
    - Repair/replacement in event of failure of major systems/components.
    - Allocation of financial responsibility for such repairs/maintenance.
    - Financial and other resources available to assist homeowners with repairs and maintenance.
- Transfer to homeowner at closing of pro rata portion of project replacement and operating reserves and reserve accounts required by applicable law, the QAP or the LURA (total required reserves divided by total number of units in project). No such reserves will be withdrawn or retained by the project owner.
- For single family detached units (not including tribal properties), the parcel of land on which the unit is located must be owned by or transferred to a community land trust or resident owned cooperative designed to preserve housing affordability.
- Standard owner's policy of title insurance paid for by project owner.
- Homeowner insurance coverage will be in place at the time of sale or transfer with continuous coverage for a period of at least one-year after transfer and plan for continuation of coverage and payment of premiums thereafter.
- Limitation on homeowner retention of equity upon subsequent sales.

- Mandatory homeowner occupancy of unit as primary residence after transfer.

7. Prior to conversion and transfer of units, the owner must also submit copies of the following:
    - All transaction documents between or among each buyer, the project owner and any other necessary party (e.g., BIA for tribal properties) (including copies of executed documents once executed), including all of the following as applicable:
        - Purchase/sale agreement.
        - Ground lease/sublease with homeowner.
        - Deed or other instruments conveying home to homeowner.
        - Restrictive covenants.
        - Right of first refusal.
        - Any other agreements.
    - If not included in the foregoing transaction documents, the following additional documents:
        - Document(s) establishing binding limitations on homeowner retention of equity upon subsequent sales.
        - Document(s) establishing binding requirement on homeowner to occupy home as primary residence after transfer.
        - Document(s) providing for transfer of pro rata share of project reserves to buyer at closing.
        - Document(s) showing project reserves, calculation of each unit's pro rata share of reserves and providing for transfer of such pro rata share of project reserves to each homeowner at closing.
    - Title commitment for standard owner's policy of title insurance, including legal descriptions for all units being transferred in form allowing recording of LURA releases in county real property records.
    - Evidence of required homeowner insurance coverage.
    - Written certification by project owner that all project units are being sold and transferred to existing unit tenants, or, if not being sold and

transferred to existing tenants, that such units will remain rental units subject to the low income, rent restrictions and other requirements of the LURA, with a list of names of existing tenants for all project homes and identifying all such existing tenants who are buying their homes under the homeownership conversion.

8. Submission of the homeownership plan required in (5) and the documents required in (6) constitutes the project owner's binding commitment that any conversion, sale and transfer will be in accordance with such submitted plan and documents.
9. The project, including all units to be sold and transferred, must be in compliance with applicable housing credit physical condition standards at the time of sale or transfer, as determined by MBOH inspection.
10. Homeownership conversion, including transfer of ownership, may not proceed until and unless approved in writing by MBOH. All project units will remain subject to the LURA for its full term until and unless released in writing by MBOH. MBOH will release transferred units from the LURA only if MBOH has approved the conversion, regardless of whether the conversion or transfer of ownership has been initiated or completed.
11. Following closing and transfer of units, the project owner must submit a written request for partial release of units from the LURA, together with copies of all executed transaction documents for each unit, including the recorded deed or other instrument of conveyance, the final owner's title insurance policy and documentation of reserve transfers. Upon receipt and approval of such request and documentation, MBOH will provide the project owner with executed partial releases for each unit transferred. The project owner will be responsible for recording of release documents and all recording fees.

## D. 130% BASIS BOOST

Applications for projects not located in an area designated by HUD as a difficult development area (DDA) or a QCT may request housing credits calculated at up to

130% of eligible basis. The documentation must explain why the project would not be feasible without the boost. MBOH also may consider any one of the following factors:

- Tribal or small rural project.
- Qualification of the building for Rural Development funding.
- Targeting of more than 75% of project units to 50% or below AMI level.
- Includes historical preservation, preservation or replacement of an existing affordable housing project (replacement must replace the same project with the same or similar affordability requirements).
- Achievement of financial feasibility.

## E. NON-HOUSING AMENITIES; NO COMMERCIAL USE OF AMENITIES

Luxury amenities will not be considered or funded with credits. Luxury amenities include, but are not limited to swimming pools, golf courses, and similar amenities. Projects may include swimming pools, golf courses, and other similar amenities only if funded by sources other than housing credits (this requirement does not apply to garages or car ports). Standard parking spaces required by zoning must be included in tenant paid rent.

Amenities provided will not be used for commercial purposes, which means use of any project amenities, common space or other project property or facilities by others than project tenants for which the project owner or management receives any compensation (e.g., rent payments) for such use, whether in cash or in kind.

## F. HOUSING CREDIT PROCEEDS

Applications must estimate expected credit proceeds. Within 60 days after the partnership or operating agreement is signed by all parties, the applicant must provide MBOH with a copy of the executed agreement to avoid a late fee. Prior to issuance of IRS Form(s) 8609, MBOH will require the accountant's certification to include gross syndication proceeds and costs of syndication.

## G. DEVELOPMENT COST LIMITATIONS

All development cost limitations in this QAP will apply to all current applications and projects and to all projects awarded credits under a prior QAP. In the event a more favorable limit was used in a prior QAP the project will be allowed to use it.

### 1. HARD COSTS

All applications must provide justification for development costs. Even for those projects meeting specific QAP limitations, MBOH will evaluate cost per unit and cost per square foot for all projects for reasonableness, taking into account the type of housing, other development costs, unit sizes, the intended target group of the housing, where the project will be located, and other relevant factors.

MBOH may decline to award credits to a project where it determines that costs do not reflect the optimal use of housing credits.

### TOTAL PROJECT COST PER UNIT LIMIT

Total project cost may not exceed $395,000 per unit (total project cost per unit limit) unless and to the extent that owner obtains a waiver from the Board. If a project's total project cost per unit is above $395,000 or has an increase that results in total project cost per unit of over $395,000, owner must request a waiver from the Board. In addition, if a project has a 20% total project cost per unit increase from the time of award, a waiver request from the Board is also required.

Projects that issue bonds and then invest the proceeds until needed may net the investment earning from the interest cost for the project uses (e.g. the cash back forward structure).

Owners must notify and explain to MBOH a greater than 10% increase in total project cost per unit from the amount at the time of award. The notification(s) must be included

in the quarterly report for the period in which the increase occurs. Failure to notify and explain such cost increases to MBOH may result in being ineligible for a waiver.

### COMMUNITY SERVICES FACILITY COST EXCLUSION

For purposes of the total project cost per unit limit, costs of community service facilities may be deducted from total project cost if the application includes:

- A calculation of the costs of the community service facility(ies) that is reasonable and consistent with the proforma (Excel) for the project and that specifically itemizes the costs reasonably attributable or allocable to such building or partial building.
- A written certification that the project's total project cost per unit will be within the limit in this QAP upon exclusion of such community service facility costs.
- The applicant's agreement that, upon request, it will provide MBOH staff with supporting cost documentation, a CPA certification or other information to support the cost calculation and will pay the cost of an independent third-party expert analysis if required by MBOH.
- Applicant's agreement is that MBOH will deny an exclusion if staff determines that such cost calculation is unreasonable or not supported by appropriate documentation or certification.

## 2. ADDITIONAL COST LIMITATIONS

MBOH will reduce amounts in excess of the following cost limitations, as calculated in proforma (Excel).

### BUILDER'S OVERHEAD

Builder's overhead, the builder's overhead shown in the applicant's properly completed proforma (Excel) (cost limitations and requirements), is limited to a maximum of 2% of construction costs.

### GENERAL REQUIREMENTS

General requirements are limited to a maximum of 6% of construction costs.

## BUILDER PROFIT

Builder profit, the builder's profit shown in the applicant's properly completed proforma (Excel) (cost limitations and requirements), will be limited to a maximum of 6% of construction costs.

## DEVELOPER FEES

Developer fees will be limited to a maximum of 15% of total project cost.

For purposes of this developer fee limit, total project cost does not include developer fees, project reserves or land costs. Housing credit 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.

## DISCLOSURE OF TRANSACTIONS INVOLVING RELATED PARTIES

Applicants and owners must disclose all transactions with related parties; failure to do so may result in the project not receiving an award. MBOH may reduce developer fees, builder profit or other soft costs on projects involving related party transactions.

## LIMITATION ON SOFT COSTS

The soft-cost-to-hard-cost ratio (soft cost ratio) for the project, based upon the application's proforma (Excel), may not exceed:

- 40% for 9%
- 45% for 4% or twinned projects

If the soft cost ratio for a project exceeds the applicable maximum, applications must justify soft costs outside these ranges in a narrative. MBOH will consider the reasonableness of the project's proposed rent levels, operating expenses, reserve payments, projected vacancy rates, debt service obligations, and amount of credits requested. MBOH will allow the applicant to specify how and by what amount its soft

costs will be reduced in writing within ten (10) business days. The application will reflect such adjustments for all purposes under the Housing Credit program. If the applicant fails to communicate its adjustments within the required time, MBOH will return the application. Projects must meet this limit at pre-application, full application, 10% cost certification and final cost certification. The Board may approve a waiver to the soft cost cap on a case-by-case basis; this limit applies to all current and prior projects.

### PROFESSIONAL FEES

The application platform must address and provide justification for professional fees. MBOH will compare these fees as a percentage to construction costs for reasonableness.

### ADDITIONAL DUE DILIGENCE

MBOH may require due diligence in the form of additional cost certification for projects MBOH considers to be at high risk for unreasonable costs. This additional due diligence may include audits of contracts among or between development team members or contractors and/or sampling of subcontractor invoices to verify consistency with the developer cost certification.

## IX. MBOH COMMUNICATIONS

MBOH may communicate with applicants to provide interpretive guidance or for purposes of clarifying, verifying or confirming any information.

MBOH may query an applicant or other persons regarding any concerns related to an application or the management, construction or operation of a proposed or existing low-income housing project. Questionable or illegal housing practices or management, or insufficient or inadequate response may be grounds for disqualification of an application.

MBOH may contact local community officials to discuss relevant evaluation criteria. MBOH may also contact any other third parties to confirm or seek clarification regarding any information in the application.

MBOH will provide notice of the project to the chief executive officer (or the equivalent) of the local jurisdiction within which the project is proposed to be located and provide such individual a reasonable opportunity to comment on the project.

## X. RESERVATION, CARRYOVER ALLOCATION, CREDIT REFRESH AND FINAL ALLOCATION

The requirements in this section apply to all projects awarded credits.

### A. RESERVATION AGREEMENT

After an award of credits, MBOH will provide a reservation agreement (Reservation Agreement) to the owner. The owner must return the signed reservation agreement to MBOH by March 1st of the year following the award (or by such other date specified by MBOH as necessary to preserve the credits). The owner must meet the requirements and conditions described and provide the documentation required by the reservation agreement to receive a carryover allocation (initial allocation) or final allocation of housing credits.

MBOH will revoke an approved reservation 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 and the applicable QAP.

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 allocation (initial allocation) 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.

## B. CARRYOVER ALLOCATION

To receive a carryover allocation, the owner must submit to MBOH, no later than December 1st of the year following the award (or by such other date specified by MBOH as necessary to preserve the credits), the executed Reservation Agreement, proof of ownership, executed and recorded Restrictive Covenants, and the reservation fee. MBOH will issue a Carryover Allocation Agreement to the owner for execution and return to MBOH. The Carryover Allocation Agreement must be executed and returned to MBOH prior to December 31st of the same year.

## C. 10% COST CERTIFICATION

The owner must submit certification and related documentation as required by the Carryover Allocation Agreement demonstrating that owner meets the 10% test under Section 42 (10% cost certification) no later than the first anniversary of the date on which MBOH executed the Carryover Allocation Agreement. Refer to the 10% checklist on the application platform for the most current checklist of 10% cost certification submission requirements. Failure to submit any required documentation, pay the required fee, submit certification for 10% documentation, or meet the 10% test will cause forfeiture of awarded, reserved or allocated housing credits.

## D. LURA/DECLARATION OF RESTRICTIVE COVENANTS

When submitted to MBOH, the executed and recorded Declaration of Restrictive Covenants/ Land Use Restriction Agreement (Restrictive Covenants or LURA) must be accompanied by documentation confirming that the proposed LURA contains the

accurate legal description of the project land (e.g., most current ALTA survey or title commitment).

By execution and recording of the LURA the owner waives the right to request that MBOH locate a nonprofit qualified buyer as provided in Section 42 (qualified contract process). The extended use period specified in the LURA may not be terminated early through the qualified contract process and the owner must comply with the restrictive covenants for the entire extended use period as provided in the LURA. All projects must have an additional 35 years of affordability beyond the initial 15-year compliance period (total extended use period of 50 years).

Prior to issuance of Form(s) 8609, documentation must be submitted evidencing the first priority position of the restrictive covenants. If such evidence 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(s) 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.

For projects constructed or to be constructed on leased ground, the LURA is not required to have priority over the ground lease. However, the LURA and ground lease shall include such provisions as are satisfactory to MBOH to assure to the greatest practicable extent that the project will be subject to all LURA restrictions for the full extended use period.

## E. REFRESHING CREDITS

MBOH may approve conversion of previously awarded credits from the original credit year of the credits awarded to a more recent credit year (credit refresh) for projects that have been issued a carryover allocation and for which MBOH has approved the 10% cost certification.

To request a credit refresh, the owner must submit a revised proforma (Excel), narrative with justification for request, along with the fee as specified in the fee schedule. Upon receipt of the application and staff evaluation, the application will be placed on the agenda for consideration at the next MBOH Board meeting. The owner or its representative must appear at the meeting to answer Board questions 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 making its determination, MBOH may consider any or all of the following:

- 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.
- Any factors beyond the control of the development team, owner or other project participant, significantly contributing to the need for the credit refresh.
- The likelihood that the project will be completed and placed in service within a reasonable time, under the circumstances, if approved.
- The likelihood that the project will not be completed or placed in service if denied.
- The need for the project, as determined in the original application and award processes.
- Any significant changes in market conditions or other factors that affect the financial feasibility of or need for the project.
- Any other factor or factors that the Board deems relevant to the determination.

The amount of credits reserved through a credit refresh shall not exceed the amount of credits originally allocated or the maximum credit award under the applicable QAP. All requirements of the applicable QAP and applicable law shall apply as if such reservation were the original.

## F. FINAL ALLOCATIONS/8609

Refer to the 8609 checklist on the application platform for the most current checklist of items required for issuance of Form(s) 8609. Final allocation of all credits is subject to payment in full of the applicable fees specified in the fee schedule.

MBOH will assess a late fee if it does not receive all required items within 6 months of the last building placed in service date. MBOH may make a site visit and conduct a file audit prior to issuance of Form(s) 8609. Owners must send a copy of each completed and signed Form(s) 8609 back to MBOH within 3 months of issuance.

## G. PUBLIC NOTIFICATION

Any public relations actions by a recipient of credits must specifically state that a portion of the funding is from MBOH, including radio, television, and printed advertisements (excluding rental ads), public notices, and signs at construction sites.

## H. CHANGES TO PROJECT OR APPLICATION

MBOH must approve any changes in the implementation schedule greater than 60 days. Owners must submit notification in writing with justification to MBOH within 10 business days of the change.

MBOH must specifically approve any of the following listed changes (substantial changes) in the project as set forth in the application. The applicant must notify MBOH in writing at least 30 days before implementing any change to or of:

- A member of the development team, including the applicant, occurring prior to placed in service.
- Developer fee agreement or consultant fee agreement.
- Participating local entity.
- Total project cost per unit in a percentage or dollar amount that requires notification to MBOH or a waiver of the total project cost per unit limit.

- 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.
- Any mandatory tenant obligation (*e.g.*, adding payment of utilities).
- 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 proforma (Excel) changes by 10% or more).
- Common area square footage, location or purposes.
- Housing credits required for the project.
- Extended use period.
- Any item that would have resulted in a lower development evaluation criteria score under the applicable QAP or failure to meet any mandatory development evaluation criteria or threshold requirement.
- Any other significant feature, characteristic or aspect of the project.

If MBOH staff denies approval of any such substantial change, the applicant may request Board review and must inform MBOH staff if the proposed change requires immediate or urgent review and approval. Any requested changes may incur additional fees.

## XI. QUARTERLY REPORTS

Refer to the quarterly report form on the application platform for the most current checklist of items and applicable due dates. The quarterly reporting requirements apply to all projects that have an award of credits. The project must submit the written

quarterly status reports by the 10th day of every calendar quarter. Late reports will result in a fine in accordance with the fee schedule.

## XII. QUALIFIED CONTRACT PROCESS

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 the Montana Board of Housing, Qualified Contract Process (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 current version of the QCP as provided in the adopted rule. The current version of the QCP is available on the MBOH website.

# APPENDIX: A
# DEFINITIONS

## APPENDIX A: DEFINITIONS

Terms used in this QAP shall have the same meaning as in Section 42 and implementing regulations unless otherwise indicated. As used in this QAP, the following definitions apply unless the context clearly requires a different meaning:

***"4% Credits"*** means housing credits 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 housing credits that may be awarded through the competitive allocation process in accordance with the applicable 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 MBOH's full market study requirements.

***"Acquisition"*** means obtaining title, lease or other land and property control over a property for purposes of a housing credit project. Acquisition includes purchase, lease, donation or other means of obtaining land or property control.

***"Acquisition/Rehabilitation"*** means acquisition of a property with one or more existing buildings and renovation meeting the substantial rehabilitation standard for existing buildings on the property that are part of a project.

***"Adaptive Reuse"*** means the process of reusing an existing building for a purpose other than which it was originally built or designed for.

***"Allocation"*** means an initial allocation or a final allocation.

***"Available Annual Credit Allocation"*** is defined as the credit ceiling allocated to MBOH by the federal government for the previous calendar year.

***"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/carports, manager units, etc.

***"Community Service Facility"*** means a building or part of a building constructed and included as part of and on the same tract of land as a project: (a) that provides services designed to serve primarily individuals whose income is within the percentage(s) of area median income to be served by the project (but are not limited to serving such individuals or project residents exclusively); and (b) that charges service fees, if any, which are affordable to individuals whose income is within the percentage(s) of area median income to be served by the project. Community service facilities are not required to meet Section 42 community service facility requirements for inclusion in adjusted basis in order to qualify for the cost exclusion under the development cost limitations provisions of this QAP (except as included in this definition).

***"Construction Costs"*** means all costs listed on the proforma (Excel), 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 housing credit application and/or development process.

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

***"Developer"*** means the individual(s) and/or entity(ies) specifically listed and identified as the developer on the application platform, responsible for development, construction and completion of a housing credit project.

***"Development Evaluation Criteria"*** means the development evaluation criteria set forth in the development evaluation criteria and selection section of this QAP.

***"Development Team"*** means and includes the applicant, owner, developer, general partner, qualified management company, and housing credit consultant identified as such in the application.

***"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 housing credits, as authorized or required by this QAP.

***"Elderly Property"*** means an elderly property project as defined in federal law for which a Fair Housing Act exemption for housing for older persons will apply.

***"Expense Coverage Ratio"*** means, with respect to a project with no hard debt included in the proforma (Excel), 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 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.

***"Final Allocation"*** means, with respect to housing credits, MBOH issuance of an IRS Form(s) 8609 (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.

***"Form"*** means the most current version of any MBOH form referenced in this QAP. All forms are available on the MBOH website or application platform.

***"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 proforma (Excel).

***"Hard Costs"*** means and includes building acquisition costs, site work costs and construction and rehab costs, as shown in the applicant's properly completed proforma (Excel), uses of funds.

***"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 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 nonprofit 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"*** or "Carryover Allocation" means the carryover allocation by MBOH of housing credits from a particular year's federal LIHTC allocation to the state for purposes of later 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.

***"In-Process Project"*** means any 9% credit project for which MBOH and the taxpayer previously have entered into and executed a Reservation Agreement but for which all building have not been placed in service. The term does not include any project for which MBOH has rescinded the credits or the applicant has returned the credits.

***"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 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, a project with more than 24 housing credit units.

***"Pre-Application"*** means all information required under pre-application thresholds.

***"New Construction"*** means construction of one or more new buildings.

***"Owner"*** means the legal entity that owns the project.

***"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 proforma (Excel) project information. Project square footage includes all building square footage available to or serving tenants, including units, management unit(s) and offices, common areas, balconies, patios, storage and parking structures, and should reflect measurement to include total building envelope from outside wall to outside wall.

***"Proof of Ownership"*** means 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.

***"Qualified Management Company"*** means a management company that meets the education requirements specified in Appendix B, 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" or "Nonprofit"*** 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" or "Rehab"*** means an acquisition/rehabilitation or rehabilitation project that meets the substantial rehabilitation standard.

***"Related Party"*** means an individual or entity who's financial, family or business relationship to the individual or entity in question permits 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 the conditional setting aside by MBOH of housing credits from a particular year's federal LIHTC allocation to the state for purposes of later carryover allocation (initial allocation) 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.

***"Selection Criteria"*** means and includes all the requirements, considerations, factors, limitations, development evaluation criteria, set asides, priorities and data set forth in this QAP and all federal requirements.

***"Selection Standard"*** means the standard for selection of projects to receive an award of housing credits set forth in the award determination subsection, i.e., the MBOH Board's determination that one or more projects best meet the most pressing affordable housing needs of people within the state of Montana as more specifically set forth in such subsection. The selection standard also applies for purposes of the selection of projects invited to submit full applications through the pre-application process.

***"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 $5,000,000 of ten year credits 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 proforma (Excel), 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 proforma (Excel)) 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.

***"Total Project Cost"*** means all costs shown in proforma (Excel) uses of funds line "Total Projects Costs without Project Reserves" (except as provided in the development cost limitations provisions of this QAP with respect to exclusion of community service facility costs). Total project cost does not include project reserves.

***"Tribal"*** means an application sponsored by a Tribally Designated Housing Entity (TDHE) or other tribally sponsored entity.

***"Twinned Projects" or "Twinned 4%/9% Projects"*** means one or more 4% projects and one or more 9% projects developed and constructed on a coordinated basis by a single development team where each of the included projects is legally separate and distinct, physically distinct (e.g., separate buildings, located on separate fee or ground lease parcels, separate condominium units, etc.), financed, developed and constructed pursuant to separate contracts or contract schedules, managed and maintained under separate contracts and with separate accounting and finances, all in accordance with applicable IRS requirements, and where the 4% and 9% projects share access to and use of facilities, such as for parking, common areas, reciprocal utility or maintenance

easements or other similar items, pursuant to recorded covenants, conditions, restrictions, agreements and/or easements providing for or based upon a reasonable allocation of costs between the projects in accordance with applicable IRS requirements. This definition is intended to be descriptive rather than to establish separate Montana requirements for such projects, which projects must meet all applicable IRS and other legal requirements.

***"Proforma (Excel)"*** means the most current proforma (Excel) available on the application platform.

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

***"Vacancy Rate"*** means percentage of vacant affordable units in the application's market area.

# APPENDIX: B
# DESIGN
# REQUIREMENTS

## APPENDIX B: DESIGN REQUIREMENTS:

## BASELINE PROJECT REQUIREMENTS:

All projects must meet or exceed the adopted State of Montana building code requirements, whether or not the State of Montana building code has been adopted in the project's jurisdiction.

Information herein describing the requirements for new construction also applies to acquisition/rehabilitation projects per the International Existing Building Code; Each requirement applies if existing construction is being replaced or walls are being removed and remodeled.

Words and phrases used in this design requirements appendix have the meaning set forth in the IBC or applicable adopted governing code.

If a project must comply with Section 504 requirements, but any item in Exhibit B exceeds that requirement, the project must comply with the Exhibit B requirement. In other words, the most stringent requirement shall apply.

The developer may request a waiver or exception on any item in the design appendix (except where otherwise stated). The request must be in writing and include justifying documentation demonstrating substantial good cause for the requested waiver or exception from the minimum requirements. MBOH staff will consider the request and may in its discretion approve or deny the request.

All design requirements in this QAP will apply to all current applications and projects and to all projects awarded credits under a QAP for 2025 or later.

## PROJECT ACCESSIBILITY REQUIREMENTS:

At least 5% of the projects total number of units must be “accessible” as defined in the International Building Code (IBC) and the adopted ICC A117., as well as the applicable adopted governing code; even when project funding does not require Section 504 compliance.

Accessible units only: For new construction projects, this base requirement is to exceed IBC and ICC requirements by defining that 5% of the overall unit count is to be a fully accessible unit, not just a Type A design. For acquisition/rehab projects, if cabinets are replaced this requirement applies.

a. Provide open area under kitchen sink, at the workspace and lavatory locations in the accessible unit. Removable cabinet fronts with finished floors are allowed.

All accessible Type A and Type B units must: For new construction, this is not required for units not labeled as such, i.e., a standard unit in a building on a non-accessible floor does not have to comply. For rehab projects, if water closets are replaced this requirement applies. For rehab projects, if operable parts are not relocated this requirement does not apply.

a. Have water closet flush controls on the open side of the room.

b. Design all applicable described operable parts no less than 15” above the finished floor & no greater than 48” above the finished floor, regardless of floor level.

## PROJECT ADAPTABILITY REQUIREMENTS:

Blocking (reinforcement in the wall framing) is required at all bathrooms for future grab bar installation, regardless of the location in the building. For rehab projects, if you are not opening walls to reconstruct units, then this does not apply.

36” wide doors and cased or drywall openings intended for user passage are required at all units and all common area doors at all levels of a project regardless of the location in the building. The exceptions are linen, storage, clothing closets not greater than 24” deep max, and pantries not designed for user pass through. *For rehabs, if you are not opening walls to reconstruct units, then this does not apply.*

Lever door hardware with push button locking (other than dwelling unit entry or patio/deck door where deadbolt is allowed) required at all units regardless of the location in the building. This includes all types of closet doors except bi-pass doors. For rehabs, if you are not replacing door hardware, then this does not apply.

**TYPE B SPECIFIC REQUIREMENTS**

Type “B” units are limited to the ground floor only when there is no elevator. If an elevator is present, then all units on all levels accessed by the elevator are to be type “B”.

Ensure all units labeled as a type “B” have the ability to add a strobe along with the horn to a unit by modifying the device if a reasonable accommodation is requested.

Removeable cabinets are required at all type “B” Units. This is to ensure the adaptability of the kitchen in the future if reasonable accommodation is requested. Removeable cabinets can be achieved via the Fair Housing Act Design Manual detail graphic on how to install the base cabinet. The countertop and sink or lavatory must remain in place and flooring, and wall protection must be present when the cabinet is removed to qualify as removeable. For new construction, the locations of the removeable cabinets are the kitchen sink, the kitchen workspace and the bathroom lavatory. For rehab this applies only if the cabinets are being replaced.

Electrical panel: the operable parts must be at a max 48” above the finished floor in all type “B”, “accessible” or type “A” units per code in accordance with all applicable codes.

## PROJECT VISITABLE REQUIREMENTS:

No step entry required at all building entries, patio and decks, unless project complies with site impracticality per the International Building Code determination which must be verified by architect.

## PROJECT LIVEABLILITY REQUIREMENTS:

### WINDOWS

Egress windows are required in all bedrooms. Historic preservation projects may allow operable windows, only if dimensionally the width and height cannot meet code. For rehab's, egress is required only if windows are being replaced, is feasible to achieve within the existing opening in the wall and if allowed through the State Historic Preservation Office review.

### ENERGY SAVING MEASURES

The following are required in all units:

1) Energy star appliances: only projects providing and replacing appliances must meet this requirement. Meaning dishwashers are not required but if provided it does need to be energy star certified.
    - Dishwasher, refrigerator/freezer, clothes washer, range hood.
    - Energy star ceiling fans – living rooms only.
    - Energy star bathroom exhaust fans.
2) Energy conservation: for acq/rehab projects this applies only if replacing appliances.
    - LED exterior lighting
3) Water conservation: for new construction when providing. For acq/rehab projects this applies only when replacing:
    - Water flow saving devices:
        - Kitchen faucet s=1.5gpm
        - Shower heads=1.5gpm
        - Other faucets=1.0gpm

- Water closet = 1.28 gpf
- Rain sensing landscape irrigation system or equivalent.
- Water efficient landscaping entire project.
- On-site recycling of construction materials during construction for cardboard and wood at a minimum.

4) On site recycling - to save energy from a waste and transportation perspective.
   - On-site recycling of construction materials during construction for cardboard and wood at a minimum. Only required if jurisdiction the project is in offers this service.

**HEALTHY INTERIOR ENVIRONMENT**

The following healthy interior measures are required when providing or replacing:

**LOW VOC PAINTS, STAINS, ADHESIVES & SEALANTS INTERIOR ONLY**

Interior paints, coatings & primers must have a VOC content less than or equal to the thresholds provided by the most recent version of SCAQMD 1113 available at time of product specification for all interior paints, coatings and primers.

VOC emissions verified as compliant with CDPH Standard Method for all wall finish paints.

All wallpaper used must be phthalate free.

Interior adhesives and sealants must have a VOC content less than or equal to the thresholds provided by the most recent version of SCAQMD 1168 available at time of product specification for all interior adhesives and sealants.

**SMOKE FREE LIVING**

For all projects, 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 25 feet from all building entrances and exits. The written policy must provide appropriate exceptions for bona fide cultural or religious practices.

**PASSIVE RADON SYSTEM**

At minimum all projects require a passive radon system. The developer is required to provide compliance documentation from an accredited professional radon mitigation specialist.

**LEAD BASED PAINT**

Must comply with HUD's "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," known as the Lead Safe Housing Rule, 24 CFR Part 35. Developers must provide MBOH with documentation from a certified professional abatement contractor for project compliance with the Lead Safe Housing Rule.

**ASBESTOS**

Must comply with 'level of environmental' review as outlined in HUD's adopted policies for rehabilitation, and any applicable jurisdictional requirements.

Montana Department of Environmental Quality (DEQ) administers the following:

- National Emissions Standards for Hazardous Air Pollutants (NESHAP) 40 CFR Part 61, subparts A (General Provisions) and M (National Emission Standard for Asbestos).
- Administrative Rules of Montana (ARM) Title 17, Chapter 74, Subchapter 3 (Asbestos Control).
- Montana Code Annotated (MCA), Title 75, Chapter 2, Part 5 (Asbestos Control).

The most restrictive requirement applies. Developer must provide documentation from an accredited professional abatement contractor project compliance with the applicable regulations.

**UNIT FUNCTIONALITY**

The following are required of all units:

1. One linen closet in a common area (not in a bedroom)
    a. No greater than 24” in depth clear; minimum of 24” wide door.
    b. Three shelves minimum.
    c. This can be combined with a coat closet.
2. One pantry cabinet or closet:
    a. No greater than 24” in depth; minimum of 24” wide door or opening.
    b. Three shelves minimum.
3. Accessible common laundry for entire building which includes clothes washers and clothes dryers (or any combination of the following):
    a. One clothes washer & one clothes dryer for every eight units in a project and must be on an accessible route (these can be coin operated machines).
    b. Washer and dryer hookups in each unit, must construct a closet with a depth of a minimum 36” deep clear inside (appliance specification must be verified), using a 6’-0” wide door opening for side-by-side applications and where allowed by code, stackable units will use the same depth as noted above with a 3’-0” wide door opening.

### DURABILITY

The following are required of all units:

1. Flooring:

   Hard surfaces must be a minimum of 12-millimeter wear layer (0.3 mm). All hard surface flooring must be floor score certified for air quality. Carpet must be a minimum of 26 ounces (face weight). Must be green label plus certified for all carpet related flooring. No exceptions will be considered for flooring.

2. Cabinets:

   Cabinets are required at a minimum to comply with Architectural Woodwork Institute standards at the economy grade level. Must have no added formaldehyde. Must contain cabinet fronts made from solid wood. Must have front stiles pocket-drilled and assembled with screws for rugged durability. Side and back panels must be made from 3/8" vinyl covered particleboard minimum.

## AMENITIES ON SITE

### FAMILY HOUSING

One on-site play area required. If a play structure is provided it must have fall protection. One bench is required within the play area. If another public option is available within a reasonable distance (generally within a block), MBOH staff may, in its discretion waive this requirement.

### SENIOR HOUSING

Covered outdoor seating is required and a common area room for library space or seating area.

### PARKING

The parking plan that is required by local code is the minimum requirement. Any type of parking that is being charged for and is excluded from basis will not be considered.

## GREEN INITIATIVES:

Developers must choose and comply with one option as a discretionary additional requirement for the development.

### ENERGY CONSERVATION

### CHOOSE 1 OF THE FOLLOWING 3 FOR NEW CONSTRUCTION PROJECTS

1. Building envelope components exceeding the adopted International Energy Conservation Code (IECC); includes windows, doors, insulation values in roof and walls and crawlspace, basement or slab on grade. Each must be five percent over the applicable IECC value.
2. Energy Star Certification per the applicable Energy Star Homes Program Revision and Implementation Timeline (see energystar.gov).
3. Enterprise Green Communities certification per the applicable Enterprise Green Communities Criteria based on project timeline (see greencommunitiesonline.org).

### CHOOSE 1 OF THE FOLLOWING 2 FOR REHABILITATION PROJECTS

### BLOWER DOOR

Owner or developer to hire a qualified energy consultant to perform blower door testing and to certify 50% of the total number of dwelling units in the existing building or buildings comply with the adopted State of Montana IECC level of Air Changes per Hour (ACH) at the time the project is awarded.

The developer or builder must notify MBOH at least one week in advance of the date and time that tests will be performed and MBOH staff must be permitted to attend and observe such testing. Proof of such testing must be submitted to MBOH to qualify for issuance of Form 8609(s), in the form of a report that identifies the building and the unit number on the site.

The owner must provide that report to the architect to remedy the findings if any occur that do not meet the ACH or are higher than the adopted ACH. The owner and architect upon signing the certification at the end of the project will be certifying that the work is completed and complies with the ACH.

**INFRARED**

Owner/developer to hire a qualified energy consultant to perform infrared tests on 50% of the total number of dwelling units in the existing building or buildings before and after the construction.

At the time of testing there must be a 20 degree temperature difference from outdoors to inside the unit. MBOH shall be notified and invited to attend one week in advance of the tests. While you need to test 50% of the dwelling units total on the site, you also need a representative sampling of the common areas as applicable to only one building on the site, ie community building or space if it is attached to an existing dwelling unit building or a common laundry room if it is attached to an existing dwelling unit building. If any of the common areas are in their own buildings, they are not required to be tested.

The before and after test result reports shall be submitted to MBOH within 30 days after the tests. The reports shall indicate the imaging and call out findings that need repair to ensure the envelope is properly insulated and sealed. The owner must provide that report to the architect to remedy the finding. The owner and architect upon signing the certification at the end of the project will be certifying that the work is completed and fixed.

## CERTIFICATION

Upon project completion, the architect and the owner must each certify the project by providing their signature on their letterhead per the MBOH Architect Certification within the proforma (Excel) that indicates all mandatory and discretionary work is completed and installed. If the owner has hired a third party, that party must certify.

# APPENDIX: C
# COMPLIANCE MONITORING

## APPENDIX C: COMPLIANCE MONITORING

### A. OVERVIEW

Federal law requires the Montana Board of Housing (MBOH) to monitor compliance and outline procedures for notifying the Internal Revenue Service (IRS) of any instances of non-compliance. The Qualified Allocation Plan (QAP) authorizes MBOH to conduct compliance monitoring and outlines procedures for notifying the IRS of instances of non-compliance. The following compliance processes and requirements apply to all projects awarded credits

For additional information regarding MBOH compliance requirements and procedures, see the Montana Housing Compliance Manual (2024) (Compliance Manual), copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2845 or (406) 841-2838, or at the board's web site commerce.mt.gov.

### B. MAXIMUM RENTS AND TENANT OBLIGATIONS

Rents and total tenant obligations to the landlord, including any mandatory tenant-paid items, must be limited to the levels and items specified in (1) the application and/or Declaration of Restrictive Covenants, (2) the applicable HUD income and rent levels and (3) the applicable QAP, including the payment subsidy limitation below. The requirements within this section applies to all existing projects and new projects.

A project must adjust rents to accommodate tenants that receive subsidy through state and/or federally assisted voucher-based programs (voucher holders). State and/or federally assisted voucher-based programs include but are not limited to housing choice vouchers, veterans affairs supportive housing, mainstream, emergency housing

voucher, and any other similar iteration or program. Voucher-based programs specify the maximum allowable rent (payment standard) corresponding to the voucher size of the participant based on county payment standards.

A project must adjust the rent amount for a voucher holder and may not charge the voucher holder rent exceeding the payment standard applicable to the voucher holder if the project rent amount is within the greater of 5% or $50 of the current voucher payment standard applicable to the voucher holder.

MBOH staff may grant exceptions; together with supporting documentation that justifies a substantial financial hardship to the property the owner or management company seeking an exception must submit a written request for an exception.

For existing tenants, rent increases in any calendar year shall not exceed the lesser of any rent increases permitted as a result of any increase in the area median income ("AMI") or ten percent (10%) of the then-current rent amount. No more than one rent increase per calendar year is allowed. Tenants must be notified 60 days in advance of any increase. For units that are receiving rental assistance the tenant paid rent and all rent reasonableness tests will need to be considered for the rental assistance program being used.

MBOH staff may grant exceptions to this limit as necessary to reflect actual cost increases.

Exception requests, together with supporting cost and rent documentation, must be submitted at least ninety (90) days in advance of the desired effective date of any requested rent increase in excess of the limit.

Rent increases (whether or not in excess of the foregoing limits) based upon the addition of any mandatory tenant obligation (*e.g.*, adding tenant payment of utilities where not so specified in the application) are also subject to MBOH approval.

## C. COMPLIANCE FEES

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. Refer to the fee schedule on the website for current fees.

A late fee will be assessed if the complete annual compliance package is not received by the deadline. Failure to submit corrections on noncompliance 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.

## D. 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, will result in an initial late fee and monthly late fees thereafter until written notification is received.

A property management company must be a qualified management company. 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 an IRS Form 8823.

## E. OWNERSHIP CHANGES

Prior to a sale, transfer or exchange, 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, Section 42 and the applicable QAP.

The owner shall notify MBOH of any such sale, transfer or exchange and submit the following forms (available on MBOH's website) within ten business days of the closing of any such sale, transfer or exchange:

- Property Change Information Form
- Purchaser Agreement
- Release of Information Form

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 the Restrictive Covenants, Section 42 of the Code and the applicable QAP.

The owner must provide MBOH with at least 120 days advance written notice prior to offering or listing any project or project real property for sale, assignment, transfer or exchange or entering into any agreement for such transaction. MBOH may notify prospective buyers of any proposed offering or listing, and such prospective buyers may submit offers to owner to purchase such property.

The owner shall notify MBOH within ten business days of the filing of any judicial foreclosure action, receipt of any notice of trustee's sale or receipt or submission of any proposal for a deed in lieu of foreclosure with respect to any project or project property and provide MBOH with copies of the complaint, notice of trustee's sale or deed in lieu of foreclosure proposal, as applicable.

MBOH may notify the United States Secretary of the Treasury if it has reason to believe that any potential foreclosure sale or deed in lieu of foreclosure is part of an arrangement to terminate the LURA restrictions.

## F. EDUCATION REQUIREMENTS

During the legislative session of 2023, the Montana Legislature passed HB 0358, titled "An act revising property manager license laws; exempting from the property manager license requirement owners of real estate, related owners, and entities owned by related owners; eliminating the exemption for persons acting as managers of certain government-subsidized housing; amending Section 37-51-602, MCA; and providing an immediate effective date and a retroactive applicability date."

The most significant change under HB 0358 was removal of the exemption from licensing requirements for managers "of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States."

Prior to the passage of HB 0358, property managers of affordable housing properties were exempt from the property management licensing requirements, but HB 0358 has eliminated this exemption. The legislation became effective January 1, 2023, and any manager hired January 1, 2023, or later must have their required property manager's license.

Qualified management company personnel responsible for providing or explaining information for tenant qualification or qualifying tenants and verifying compliance must be certified in LIHTC compliance by one of the nationally recognized LIHTC compliance training companies. Personnel must attend a certification 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 are strongly encouraged to attend annual MBOH compliance training.

The qualified management company and site manager for a housing credit property must be trained and certified before the property is placed in service. New site managers hired for existing housing credit properties must be certified within six months. New property management companies hired for existing properties must be certified 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 must also attend Fair Housing training at least once every four years. The manager for a housing credit 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 requirement
3. Reasonable accommodation/modification
4. Applicant screening
5. Disparate impact
6. Domestic violence issues
7. Occupancy standard
8. Section 504
9. Service animals

In the event a management company fails to meet the certification or training requirements 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.

## G. RECORDKEEPING AND RECORD RETENTION

1. Recordkeeping: Owners must keep records for each qualified low-income building in the project that demonstrates for each year in the compliance period:
    1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
    2. The percentage of residential rental units in the building that are low-income units.
    3. The rent charged on each residential rental unit in the building (including any utility allowances).
    4. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under Section 42(g)(2) (as in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1989.
    5. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented.
    6. The annual income certification of each low-income tenant per unit (for an exception to this requirement, see Section 42(g)(8)(B)).
    7. Documentation to support each low-income tenant's income certification (other than as covered by the special rule for a 100% low-income building) as determined under Section 8 or by a public housing authority.
    8. The eligible basis and qualified basis of the building at the end of the first year of the credit period.
    9. The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d).

2. Record retention: Owners must retain the records described in G(1) for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of

the building.

3. Inspection record retention: Owners must retain the original local health, safety, or building code violation reports or notices that were issued by the state or local government unit (as described in Treasury Regulation § 1.42-5 (c)(1)(vi)) for MBOH's inspection under the inspection provisions of this appendix. Retention of the original violation reports or notices is not required once MBOH reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.
4. Data Collection**:** All property owners must submit, as part of the annual compliance submission, operating income and cost information for the property's latest fiscal period, including a current balance of replacement and operating reserve accounts and, at least annually and upon the request of MBOH, copies of the project's most current financial statements (may include at the Board's request profit and loss statement and balance sheet).

## H. ANNUAL COMPLIANCE SUBMISSION

The owner's certificate of continuing program compliance must be submitted annually throughout the extended use period for each property. The certificate must be signed by the owner and notarized.

Owners must file the annual certifications on the form provided by MBOH. MBOH may file an IRS Form 8823 if the owner fails to submit an annual certification before the deadline.

A checklist of the materials required for submission follows:

- Annual Owner's Certification
- Income/Expense Report
- Reserves Form
- Property Contact Information Form
- Housing Credit/Fair Housing Certifications
- Tenant Recertification

- Paying compliance fees

These materials must be submitted to MBOH by the deadline for the property's annual reporting period. Management company policies will outline which staff members are responsible for each of the tasks.

The Owner's Certificate of continuing program compliance, tenant income certifications (TIC) and other annual compliance package items 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.

## I. CERTIFICATION AND REVIEW

1. Certification: Owners must certify at least annually to MBOH that, for the preceding twelve (12) month period:
    1. The project met the requirements of the 20-50 test under Section 42(g)(1)(A), the 40-60 test under Section 42(g)(1)(B), whichever is applicable to the project (see Section 42(g)(1)(C) if average income is selected as the minimum set-aside on IRS Form 8609).
    2. There was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change.
    3. The owner has received an annual income certification from each low-income tenant, and documentation to support that certification consistent with Treasury Regulation § 1.42-5(b)(1)(vii) (other than as covered by the special rule for a one hundred percent (100%) low-income building).
    4. Each low-income unit in the project was rent restricted under Section 42(g)(2).
    5. All units in the project were for use by the general public, including the requirement that no finding of discrimination under the Fair Housing Act occurred for the project (meaning an adverse final decision by HUD or a substantially equivalent state or local fair housing agency or MBOH, or an

adverse judgment from a federal court).

6. The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes and inspection standards specified in subsection J, and the state or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project (owner must attach any violation report or notice to its annual certification and state whether the violation has been corrected).
7. There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or if there was a change, the nature of the change.
8. All tenant facilities included in the eligible basis under Section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building.
9. If a low-income unit in the building became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.
10. If the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income.
11. An extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937.
12. All low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under Section

42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)(iv)).

13. No tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low- income unit not otherwise permitted under Section 42.
14. The project complied with the Violence Against Women Reauthorization Act of 2013 and tenant protections were incorporated into the lease forms, tenant selection plans, and policies related to unit transfers.
15. The owner meets the requirements of the nonprofit set-aside if the project was allocated as such.
16. No unauthorized changes in ownership or management agent(s) have occurred.

2. Review and Inspection: MBOH must perform the following reviews and inspections:
    1. MBOH will review the certifications submitted under subsections H and I for compliance with the requirements of Section 42. MBOH may review the low-income certifications at its discretion.
    2. With respect to each tax credit project, MBOH will conduct on-site inspections and review low-income certifications (including documentation to support the low-income certifications and the rent records for the tenants).
    3. On-site inspections conducted by MBOH must satisfy both the requirements of Treasury Regulation § 1.42-5(d) and the requirements of subsections (A) through (D) below. The low-Income certification review conducted by MBOH must satisfy the requirements of subsections (A) through (D) below.
        (A) Timing. MBOH must conduct on-site inspections of all buildings in the low- income housing project and must review low-income certifications of the low-income housing project:

(1) By the end of the second calendar year following the year the last building in the low-income housing project is placed in service.

(2) At least once every 3 years thereafter.

(B) Number of low-income units. MBOH must conduct on-site inspections and low- income certification review of not fewer than the lesser of:

(1) 20% of the low-income units in the low-income housing project rounded up to the nearest whole number of units.

(2) The minimum number of low-income units in the low-income housing project set forth in the following table.

| Units in Property | Sample Size | 22-24 | 14 |
|---|---|---|---|
| 1 | 1 | 25-27 | 15 |
| 2 | 2 | 28-30 | 16 |
| 3 | 3 | 31-35 | 17 |
| 4 | 4 | 36-39 | 18 |
| 5 | 5 | 40-45 | 19 |
| 6-7 | 6 | 46-51 | 20 |
| 8 | 7 | 52-59 | 21 |
| 9-10 | 8 | 60-67 | 22 |
| 11-12 | 9 | 68-78 | 23 |
| 13-14 | 10 | 79-92 | 24 |
| 15-16 | 11 | 93-110 | 25 |
| 17-18 | 12 | 111-120 | 26 |
| 19-21 | 13 | 121-166 | 27 |

(C) Selection of low-income units for inspection and low-income certifications for review:

(1) Random Selection. MBOH will randomly select low-income units and tenant records to be inspected and reviewed. MBOH

generally will not select the same low-income units of a low-income housing project for on-site inspection and low-income certification review, because doing so would give prohibited advanced notice. MBOH may choose a different number of units for on-site inspections and for low-income certification review, provided it chooses at least the minimum number of low-income units in each case. MBOH must select the units for inspections and for low-income certification separately and in a random manner.

(2) Advance notification limited to reasonable notice. MBOH must select the low-income units to inspect and low-income certifications to review in a manner that does not give advance notice that a particular low-income unit (or low-income certifications for a particular low-income unit) will or will not be inspected (or reviewed) for a particular year. MBOH may notify the owner of the low-income units for on-site inspection only on the day of inspection. However, MBOH may give an owner reasonable notice that an inspection of the project and of not-yet-identified low-income units or review of low-income certifications will occur. The notice serves to enable the owner to assemble needed documentation for low-income certifications for review and to notify tenants of the possibility of physical inspection of their units.

(3) Meaning of reasonable notice. For purposes of subsection C(2), reasonable notice is generally no more than 15 days. The notice period begins on the date MBOH informs the owner that an on-site inspection of a project and low-income units or low-income certification review will occur. Notice of more than 15 days, however, may be reasonable in extraordinary circumstances that are beyond MBOH's control and that prevent MBOH from carrying out within 15 days an on-site inspection or low-income

certification review. Extraordinary circumstances include, but are not limited to, natural disasters and severe weather conditions. In the event of extraordinary circumstances that result in a reasonable-notice period longer than 15 days, MBOH must select the relevant units and conduct the same-day on-site inspection or low-income certification review as soon as practicable.

(4) Applicability of reasonable notice limitation when the same units are chosen for inspection and file review. If MBOH chooses to select the same units for on-site inspections and low-income certification review, MBOH may complete both the inspections and review before the end of the day on which the units are selected.

3. Frequency and form of certification: The certifications and reviews required by this subsection will be made annually covering each year of the fifteen-year compliance period and the project's extended use period. The owner's certifications will be made under penalty of perjury.

## J. INSPECTIONS

In general, MBOH has the right to perform an on-site inspection of any tax credit project at least through the end of the extended use period.

The inspection standardor the on-site inspections of buildings and low-income units required by this appendix, MBOH will review any local health, safety, or building code violations reports or notices retained by the owner in order to determine whether the buildings and units satisfy, as determined by MBOH, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703) (as effective January 1, 2001) or the National Standards for the Physical Inspection of Real Estate (NSPIRE) if adopted by the IRS for purposes of the low-income housing tax credit program.

The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A tax credit project under Section 42 must continue to satisfy these codes. MBOH will report any violation of these codes to the IRS.

## K. NOTIFICATION OF NONCOMPLIANCE

1. In general: MBOH will give the notice described in subsection K(2) to the owner of a tax credit project and the notice described in subsection K(3) to the IRS.
2. Notice to Owner: MBOH will provide prompt written notice to the owner of a tax credit project if MBOH does not receive the certification described in subsection I(1), or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in subsection I(2)(ii), or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42. If the project is within the compliance period (first 15 years of affordability period), the owner will receive notice from MBOH of any filing of IRS Form 8823 for non-compliance.
3. Notice to Internal Revenue Service:
   (i) In general: During the project's compliance period, MBOH will file IRS Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the correction period (as described in subsection K(4), including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. MBOH will explain on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under subsection I(1)(ii) and I(1)(vii) respectively, that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is noncompliance that will be reported to the IRS under subsection K(3). If the noncompliance or failure to certify is corrected within three (3) years after the end of the correction period, MBOH will file IRS Form 8823 with the IRS reporting the correction of the

noncompliance or failure to certify.

(ii) MBOH retention of records: MBOH will retain records of noncompliance or failure to certify for six years beyond MBOH's filing of the respective IRS Form 8823. In all other cases, MBOH will retain the certifications and records described in subsection I for three years from the end of the calendar year MBOH receives the certifications and records.

4. Correction period: The owner must supply any missing certifications and bring the project into compliance with the provisions of Section 42 within 30 days after the date of the MBOH notice to owner provided under subsection K(2). MBOH may extend the correction period for up to six months for good cause.

# APPENDIX: D
# LEGAL/TECHNICAL
# REQUIREMENTS

## APPENDIX D: LEGAL/TECHNICAL REQUIREMENTS AND DISQUALIFICATION

### EX PARTE COMMUNICATIONS

All interested people should review the MBOH Ex Parte Communication Policy, available on the MBOH website.

Both MBOH Board members and public stakeholders have a responsibility to refrain from ex parte communications regarding certain matters on which the Board may take action. Ex parte communications are communications in any form between a Board member and a public stakeholder other than in the course and on the record of a duly noticed public meeting of the Board regarding certain matters on the Board's agenda or that will require later Board action.

If a Board member receives or participates in such communications, the member will be required to disclose on the record at a public Board meeting the full content of such communication and the identity of the person making the communication. The Board may also impose additional remedial measures to avoid unfair advantage, or the perception of unfair advantage, or to cure any prejudice to other interested parties, including disqualification of the Board member from participating in Board discussion and action on the matter, or, if the applicant or requestor committed, or failed to take reasonable action to avoid, the ex parte communication, denial or rejection of the application or request.
Avoidance of ex parte communications is preferred over disclosure, as such communications may subject the Board to challenge regarding its action on the matter.

While the foregoing rules do not apply to all Board matters, housing credit pre-application project selections and credit awards, and other requests and approvals under this QAP that require Board action (*e.g.*, waiver requests and credit refresh

requests), are expressly subject to these ex parte communication rules and failure to observe them may lead to adverse consequences for applicants or other interested parties.

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.

**DISCLAIMER**

MBOH is charged with allocating no more housing credits to any given project than is required to make that project 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 project is feasible or viable.

MBOH reviews documents submitted in connection with this QAP for its own purposes. In allocation of housing 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 housing credits.

No member, officer, agent, or employee of MBOH shall be personally liable concerning any matters arising out of, or in relation to, allocation of housing credits.

If MBOH determines that an applicant or any member of the development team has intentionally submitted false information, MBOH may withdraw an award or recapture credits.

**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.

**DISQUALIFICATION**

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 affordable housing 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 disqualify such entity or individual for up to five years and/or any application(s) in which they are listed.

**PROVIDING NOTICE**

MBOH will provide written notice within thirty days of MBOH learning of any event that will result in a disqualification. 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 business days. The written notice must describe the event giving rise to the disqualification and specify the development team member or members affected. 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 business days of the date of the notice or, if earlier, by three 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 days of the date of the notice.

## DEMONSTRATED POOR TRACK RECORD

For purposes of determining a participant's track record, MBOH may contact or otherwise receive and rely upon information from community officials, development team or development team member references, credit bureaus, other local, state or federal agencies, including tax credit administering agencies, local health authorities, public housing authorities and other agencies administering housing subsidy programs, including Montana Department of Commerce, and any other sources as MBOH deems appropriate.

## DEMONSTRATED MANAGEMENT WEAKNESSES

MBOH may disqualify development team members for any of the following:

- Has not followed-through on the development of a project from application to rent-up and operation.
- Has not complied with MBOH submission, compliance or other requirements applicable during project development, construction and extended use period.
- Has not maintained a project to Section 42 or other program standards.
- Has or had numerous or outstanding substantial non-compliance issues or IRS 8823s.
- Has not completed required training in a certified compliance training program.
- Has not completed required management compliance retraining at least every four years.
- Has requested income targeting changes that are not supported by unanticipated hardship.
- 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.
- Has requested additional credits more than once.

- Has failed to comply with the substantial change requirements.
- Has significantly diminished the quality and long-term viability of a previous project by lowering costs below a reasonable level.
- Has delinquent late fees due and payable to MBOH.
- Has intentionally provided false information to MBOH in connection with an application, project or any related Board inquiry or process.
- 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.
- 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.

**CONSIDERATIONS**

MBOH will consider the following factors in determining whether to disqualify:

- The nature and seriousness of the incident(s).
- The frequency of such incidents.
- The incidents were or were not within the control of the individual or entity.
- The degree and timeliness to and with which the entity or individual responded to correction and educational efforts.
- The responsiveness of the individual or entity in responding timely to fees, penalties and other sanctions imposed.
- The cost or financial harm caused to the project, the tax credit agency or third parties.
- The nature and extent of inconvenience and harm caused to project tenants.
- The nature and extent of damage or expense caused to project property.
- The extent to which the project was completed failed to comply with the project as represented in the application or in approved project changes.
- The extent to which the incident would have affected scoring of the project application or an award of credits if known as the time or meeting mandatory QAP requirements.

- The extent to which completion of a project that received an award of credits was substantially delayed or prevented.
- The extent to which credits that were awarded were recaptured.
- The extent to which unreasonable or excessive fees, profits or other improper remuneration was derived improperly from a credit award or project.
- The presence of any other relevant factors or considerations.