

# NEBRASKA INVESTMENT FINANCE AUTHORITY LOW-INCOME HOUSING TAX CREDIT PROGRAM INFORMATION GUIDE

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## **PURPOSE FOR THIS INFORMATION GUIDE**

This information guide (this “Guide”) was created to provide persons interested in producing affordable housing with a general overview of the federal low-income housing tax credit (the “LIHTC”) program. We hope that by thoroughly reviewing this Guide, you will gain a further understanding of the LIHTC rules, regulations and requirements and how this program may benefit you in the creation of affordable rental housing.

Whenever possible, Nebraska Investment Finance Authority (“NIFA”) will provide a cite from the Internal Revenue Code of 1986, as amended (the “Code”), or supplemental notices as the support for the discussion at hand. It is important to note that NIFA, through this Guide, does not represent that information presented could be considered as an opinion of the Code and how it might relate to any particular property. Opinions and/or consultations on the Code and its relationship to a particular real estate transaction should be sought from qualified sources.

## **WHAT ARE LIHTC?**

The LIHTC program was created out of the Tax Reform Act of 1986, and was first utilized by the real estate development community during 1987. Section 42 of the Code governs the LIHTC program.

The LIHTC program is one means of directing private capital towards the creation of affordable rental housing. The LIHTCs provide developers of affordable rental housing with a benefit that may be used to offset their federal tax liability in exchange for the production of affordable rental housing.

The amount of LIHTCs a developer may be eligible for is directly related to the amount of qualified development costs it incurs and the percentage of low-income units within a development that meet the requirements of Code § 42 for both tenant income and rent.

## **HOW CAN LIHTCS BENEFIT THE DEVELOPMENT OWNER?**

Under the Code, a credit is a dollar-for-dollar reduction in the tax liability of the developer or investor. (It is important to note that only the owners of a LIHTC development may utilize the benefits of the LIHTCs.) Questions concerning a taxpayer’s ability to claim LIHTCs or the amount that may be utilized during any given tax year should be directed to a qualified tax consultant.

Due to the fact that developers typically cannot use all of the LIHTCs awarded to a development against their own tax liability, the LIHTCs awarded to an affordable development will usually not be useful unless outside investors acquire ownership interests in the development. The term “syndication” is used to describe the process of structuring the financial arrangements and securing the investors who will join in a limited partnership/limited liability company that will own the development.

Through syndication a limited partnership or limited liability company is created whereby the limited partners or investor members, respectively, exchange equity for the

LIHTCs. These syndications may be created by using either individual taxpayers as the limited partner or member or by obtaining equity from a single corporate sponsor.

### **CURRENT STATUS OF NIFA'S LIHTC PROGRAM**

NIFA has allocated LIHTCs for approximately 314 housing developments representing over 7,052 affordable housing units in 61 Nebraska Counties since the inception of the program in 1987 through 2003.

### **WHAT MUST AN APPLICANT DO TO QUALIFY FOR LIHTCS?**

The first and most primary requirement to be considered for LIHTCs in the State of Nebraska is the completion and submission of an LIHTC application to NIFA. NIFA is the only entity in the State of Nebraska which has the authority to allocate LIHTCs under this program.

To be considered for LIHTCs, the proposed development must undergo new construction, rehabilitation, or acquisition and rehabilitation. The minimum requirements necessary to qualify any building for substantial rehabilitation under the LIHTC program are:

1. --the expenditures are allocable to one or more low-income units or substantially benefit such units; and
2. --the amount of such expenditure over any 24-month period must be the greater of either 10 percent of the adjusted basis of the building

**or**

--the qualified basis, when divided by the number of low-income units, in the building, is \$5,000 or more.

The procedure for calculating the amount of LIHTCs potentially available to a development will be covered in detail later in this Guide.

## WHAT ARE THE REQUIREMENTS TO QUALIFY AS A LIHTC DEVELOPMENT?

Each development must include a minimum percentage of units to be set aside for eligible low-income tenants. The rent charged on these set-aside units will be restricted under Code Section 42.

Pursuant to Code Section 42(g)(1), a qualified low-income housing development means any development for residential rental occupancy if the development meets the requirement of either:

1. 20 percent or more of the residential units in such development are both rent restricted and occupied by individuals or families whose income is 50 percent or less of area median gross income\*; or
2. 40 percent or more of the residential units in such development are both rent restricted and occupied by individuals or families whose income is 60 percent or less of area median gross income\*.

\*For purposes of this determination, the median income tables as established on an annual basis by the U.S. Department of Housing and Urban Development will be utilized.

It is important to note that once an election is made, it is irrevocable. LIHTCs may only be claimed on units that have been set-aside for participation under the LIHTC program. It is possible for developers to set aside 100% of any development for consideration under the LIHTC program and in doing so claim the maximum amount of LIHTCs eligible for the development.

As stated above, the units that are to be set-aside under the LIHTC will also have rent restrictions. The specific Code citing that pertains to rent restrictions can be found in Section 42(g)(2) of the Code. A residential unit is considered rent restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit.

## LIHTC PERIOD, COMPLIANCE PERIOD, AND EXTENDED LOW INCOME HOUSING COMMITMENT

The following time periods will apply to any developer receiving LIHTCs under Section 42 of the Code:

**LIHTC Period** - The LIHTCs allocated to any development are eligible to be claimed in equal amounts over a period of 10 years (see Code Section 42(f)(1)).

**Compliance Period** - The development must remain in compliance with the set-aside and rent restriction requirements, as discussed above, for a period of not less than 15 years from the first year of the credit period (see Code Section 42(i)(1)).

**Extended Low Income Housing Commitment** - No LIHTCs will be allocated to a development unless an extended low-income housing commitment between the developer and NIFA is in effect. The requirements that must be met by this commitment are set forth in Code

Section 42(h)(6). The minimum period covered by the extended low income housing commitment, for purposes of the State of Nebraska, will be 30 years from the close of the compliance period (see Code Section 42(h)(6)(D)). Therefore, the development will be required to maintain its affordable housing characteristics for a period of **45 years**. There are, however, two provisions for the early release of the extended low-income housing commitment, each of which is discussed below:

1. Pursuant to Code Section 42(h)(6)(E)(i)(I), the extended low-income housing commitment shall terminate on the date the development is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary of the Treasury determines that such acquisition is part of an arrangement with the taxpayer, a purpose of which is to terminate the extended use period. However, under the preceding provision, the development owner may not evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit, or increase the gross rent with respect to such unit that is not otherwise permitted under the LIHTC program, for a period of not less than three years. (see Code Section 42(h)(6)(E)(ii)).
2. Pursuant to Code Section 42(h)(6)(E)(i)(II), if at the close of the 14th year of the compliance period the development owner provides NIFA with a written request to find a purchaser to acquire its interest in the low-income portion of the building. NIFA will then be given a period of one year to find such a purchaser and offer the development at a predetermined purchase price. If no such purchaser comes forward to acquire the low-income portion of the development by the end of the one-year period, then the extended low-income housing commitment will be released. (see Code Sections 42(h)(6)(F), (G), (H), and (I)). However, in no event shall the development owner present a written request to NIFA as set forth above prior to the expiration of the Required Number of Years set forth in the Land Use Restriction Agreement associated with the development.

#### **HOW DOES AN APPLICANT APPLY FOR THE LIHTC?**

For a development to be considered for LIHTCs, a LIHTC Application must be submitted to NIFA in conformance with the NIFA's Qualified Allocation Plan and LIHTC Application during a published acceptance round. All LIHTC Application rounds are published in NIFA's Qualified Allocation Plan. Additionally, the developments must conform to the requirements of Code Section 42 to be eligible for LIHTCs. Developments not meeting the requirements of Code Section 42 will be rejected by NIFA. The Qualified Allocation Plan and LIHTC Application can be obtained from NIFA.

In 2004, NIFA will utilize set-aside categories for the allocation of LIHTCs. The actual set-aside categories and percentages associated with each are detailed in the 2004 Qualified Allocation Plan. Developments will be considered on a descending order based upon total points awarded by NIFA for both threshold and selection criteria. LIHTC Applications will be prioritized against other LIHTC Applications received during the published acceptance round.

## CALCULATION OF THE LIHTC AMOUNT

Probably the most common mistake in submitting an LIHTC Application is the calculation of the maximum allowable LIHTC. In attempting to address this issue, NIFA will incorporate actual LIHTC Application pages to further demonstrate the method of calculating the LIHTC.

In conjunction with the determination of the maximum allowable LIHTC for any particular development, NIFA will review the LIHTC Application for the feasibility of the proposed development and its potential to remain a viable low-income housing development throughout the compliance period. These issues also enter into NIFA's final decision concerning the prospects of allocating LIHTCs to any development.

To determine the maximum amount of LIHTCs, NIFA will utilize three basic approaches. The first approach takes into consideration the qualified basis of the development in question. Qualified basis is the amount of depreciable capital improvements to be made to the development during the development process multiplied by the applicable fraction which is equal to the lesser of the percentage of units set-aside for occupancy by low-income tenants under the LIHTC program or the percentage of floor space attributable to the low-income set-aside units. A more in-depth discussion pertaining to the applicable fraction will be provided later in this Guide.

It is important to note that those applicants who do not wish to set-aside 100 percent of available units for occupancy by low-income tenants still must adhere to the applicable fraction requirement, as this factor will be used in the final determination of the maximum allowable LIHTC.

The second approach to determining the maximum allowable LIHTCs for any development is commonly referred to as the Equity/Funding Gap determination. Under this analysis, NIFA will analyze the total development costs associated with the creation of affordable housing. NIFA will then analyze the total sources of funding (development financing) to be obtained to meet these development costs. The resulting difference between the cost of development and available financing is the Equity/Funding Gap. After the Equity/Funding Gap has been determined, NIFA will then calculate the amount of LIHTCs needed to fill this funding gap.

The final approach that NIFA will utilize is composed of the amount of LIHTCs requested by the developer. The concept behind this approach is for NIFA not to blindly provide the developer with more LIHTCs than it requested in the first place.

Upon reaching a final determination under each of the above listed three approaches, NIFA will then select that approach that is the lowest in terms of LIHTC amount.

## QUALIFIED BASIS DETERMINATION

In providing a demonstration of how to calculate the maximum amount of LIHTC based upon the qualified basis approach, NIFA will utilize the example of the acquisition and rehabilitation of a development.

Under this example, NIFA is assuming that the development was acquired for \$1.25 million and required \$1 million in subsequent rehabilitation. The following is a “walk through” process for completing the Development Cost Schedule, as it appears within the LIHTC Application. Those sections of the Development Cost Schedule that are crossed out (XXXXX) mean that no qualified basis is allowable for that particular cost category under either the acquisition or new construction/rehabilitation components.

Part A of the Development Cost Schedule pertains to the cost of acquiring the land and existing building. Due to the fact that LIHTCs are only allowable on depreciable capital improvements, the cost of the land is not includable in eligible basis, and must be subtracted from total development costs when determining eligible basis.

Developments in which building acquisition costs will be allowable for LIHTCs will be more thoroughly discussed during a later in this Guide. To receive LIHTC for acquisition costs, the developer must submit to NIFA either a current real estate tax valuation, clearly showing the percentage of total property value attributable to the land, or a purchase contract that clearly references the amount of the purchase price, which is reasonably attributable to the land.

The cost items requested in parts B, C, D, E, F, G, H, L, and I are considered self-explanatory. Syndication costs as provided for in part J relate to any and all expenditures associated with the syndication of the LIHTCs.

\*Developer, contractor, and consultant overhead and profit fees will be allowed on new construction and rehabilitation developments. For purposes of determining the amount of LIHTCs allowable to a development, NIFA may limit the amount of such fees included in eligible basis to an amount of not more than 20% of eligible basis costs, excluding the fees. If the developer, contractor and consultant fees exceed the maximum percentage of 20%, the applicant must provide a written explanation for the variation. Acceptance of such explanation is at the sole discretion of NIFA. When an identity of interest exists between the developer and contractor, NIFA may reduce the amount of such fees includable in eligible basis where it deems such fees excessive. Applicants should further be aware that NIFA may reduce the amount of LIHTCs to achieve the range of 20% for these fees.

NIFA will scrutinize total development costs to ensure that they are reasonable in light of the low-income housing objectives. In determining whether or to what extent a development qualifies for an allocation of LIHTCs, NIFA may compare such factors as projected cost per bedroom, LIHTCs per bedroom or other meaningful measures against standards or averages deemed reasonable (such as industry cost standards and/or average costs from competing developments).

When a LIHTC Application represents both a request for both acquisition and rehabilitation LIHTC, as the example depicts, a developer fee in an amount no greater than 5% of the building acquisition costs, excluding the cost of the land and fees associated with the purchase of the land will be allowable in the eligible basis of the development. Acquisition costs of the existing building(s) must be supported by an appraisal from an unrelated third party and a settlement statement.

## DEVELOPMENT COST SCHEDULE

	<u>Actual or Est. Development Costs</u>	<u>Acquisition Basis</u>	<u>New Construction/ Rehabilitation Basis</u>
<b>(A) <u>Purchase of land and buildings</u></b>			
Land	\$ 250,000	XXXXXX	XXXXXX
Existing building	\$ 1,000,000	\$ 1,000,000	XXXXXX
Demolition	\$ _____	XXXXXX	XXXXXX
<b>(B) <u>Site work</u></b>			
Site grading, clearing, etc.	\$ _____	XXXXXX	\$ _____
Off site improvements	\$ _____	XXXXXX	XXXXXX
Other _____	\$ _____	XXXXXX	\$ _____
<b>(C) <u>Rehab/new construction cost</u></b>			
New building hard costs	\$ _____	XXXXXX	\$ _____
Rehabilitation hard costs	\$ 1,000,00	XXXXXX	\$ 1,000,000
Contractor overhead	\$ 50,000	XXXXXX	\$ 50,000
Contractor profit	\$ 50,000	XXXXXX	\$ 50,000
<b>(D) <u>Other Development Costs</u></b>			
Property appraisal	\$ 5,000	XXXXXX	\$ 5,000*
(*NOTE: Includable in basis if for determining feasibility of development. If for permanent financing not includable.)			
Market study	\$ 2,500	XXXXXX	\$ 2,500
Environmental study	\$ 1,500	XXXXXX	\$ 1,500
<b>(E) <u>Contingency</u></b>			
Construction contingency	\$ 95,000	XXXXXX	\$ 95,000
Other _____	\$ _____	XXXXXX	\$ _____
<b>(F) <u>Architectural/engineering cost</u></b>			
For design	\$ 25,000	XXXXXX	\$ 25,000
For supervision	\$ 15,000	XXXXXX	\$ 15,000
Other _____	\$ _____	XXXXXX	\$ _____
<b>(G) <u>Construction period costs</u></b>			
Insurance	\$ 5,000	XXXXXX	\$ 5,000
Construction loan interest	\$ 12,000	XXXXXX	\$ 12,000
Origination fee	\$ _____	XXXXXX	\$ _____
Credit enhancement fee	\$ _____	XXXXXX	\$ _____
Bridge loan expense	\$ _____	XXXXXX	\$ _____

	<u>Actual or Est. Development Costs</u>	<u>Acquisition Basis</u>	<u>New Construction/ Rehabilitation Basis</u>
<b>(H) <u>Financing fees and expenses</u></b>			
Bond premium	\$ _____	XXXXXXXX	XXXXXXXX
Credit report	\$ _____	XXXXXXXX	XXXXXXXX
Perm. loan orig. fee	\$ 30,000	XXXXXXXX	XXXXXXXX
Perm. loan enhancement	\$ _____	XXXXXXXX	XXXXXXXX
Cost of underwriter	\$ _____	XXXXXXXX	XXXXXXXX
Title and recording	\$ 5,000	XXXXXXXX	XXXXXXXX
Counsel fee	\$ _____	XXXXXXXX	XXXXXXXX
Other _____	\$ _____	XXXXXXXX	XXXXXXXX
<b>(I) <u>Soft costs</u></b>			
LIHTC fees	\$ 5,000	XXXXXXXX	\$ 5,000
LIHTC consultant fee	\$ 10,000	XXXXXXXX	XXXXXXXX
(Note: LIHTC fees can be included in basis.)			
<b>(J) <u>Syndication costs</u></b>			
Organizational	\$ 15,000	XXXXXXXX	XXXXXXXX
Tax opinion	\$ 5,000	XXXXXXXX	XXXXXXXX
Other _____	\$ _____	XXXXXXXX	XXXXXXXX
<b>(K) <u>Developer fees</u></b>			
Developer overhead	\$ _____		\$ _____
Developer fee	\$ 313,000	\$ 50,000	\$ 263,000
<b>(L) <u>Developmentt reserves</u></b>			
Rent-up reserves	\$ 30,000	XXXXXXXX	XXXXXXXX
Operating reserves	\$ 25,000	XXXXXXXX	XXXXXXXX
Other	\$ _____	XXXXXXXX	XXXXXXXX
<b>Total residential costs:</b>	<b>\$ 2,949,000</b>	<b>\$ 1,050,000</b>	<b>\$ 1,529,000</b>
<b>Total commercial space costs:</b>	<b>\$ _____</b>	<b>XXXXXXXX</b>	<b>XXXXXXXX</b>

<b>Deduct from basis:</b>		
<b>Grant proceeds</b>	(\$ _____)	(\$ _____)
<b>B.M.R. federal loans</b>	(\$ _____)	(\$ _____)
<b>Non-qualified non-recourse financing</b>	(\$ _____)	(\$ _____)
<b>Non-qualified portion of higher quality units</b> <i>(Section 42(d)(5))</i>	(\$ _____)	(\$ _____)
<b>Historic credits (on residential portion only)</b>	(\$ _____)	(\$ _____)
<b>TOTAL ELIGIBLE BASIS</b>	<b>\$ 1,050,000</b>	<b>\$ 1,529,000</b>
<b>High cost area adjustment (x 130%)</b> <i>(no adjustment is allowed for acquisition costs)</i>	<b>XXXXXXXX</b>	<b>XXXXXXXX</b>
<b>TOTAL ADJUSTED ELIGIBLE BASIS</b>	<b>\$ 1,050,000</b>	<b>\$ 1,529,000</b>
<b>Multiplied by the applicable fraction</b>	<b>100%</b>	<b>100%</b>
<b>TOTAL QUALIFIED BASIS</b>	<b>\$ 1,050,000</b>	<b>\$ 1,529,000</b>
<b>Multiplied by the Applicable Credit Percentage</b>	<b>4.0%</b>	<b>9.0%</b>
<b>TOTAL AMOUNT OF LIHTC REQUESTED</b>	<b><u>\$ 42,000</u></b>	<b><u>\$ 137,610</u></b>

Upon the completion of the cost items specified within the development cost section of the LIHTC Application, the applicant will then **deduct** from the total residential costs the following items:

1. **Grant proceeds** - Pursuant to Code Section 42(d)(5)(A), any grant of which any portion is funded with Federal fund, will require that the eligible basis for that development to be reduced by the amount of such grant. Simply stated this means that if a development receives a Federal grant, then the amount of that grant must be subtracted from the total residential costs prior to the determination of LIHTCs. A similar rule applies to costs financed with the proceeds of state grants.
2. **Below market rate (B.M.R.) federal loans** - Pursuant to Code Section 42(i)(2)(B), developments receiving financing the source of which is from Federal funds, with an interest rate that is below the applicable federal rate, may either (i) reduce eligible basis by the amount of such financing or (ii) reduce the applicable LIHTC percentage from nine percent to four percent. A demonstration will be provided below for this scenario.
3. **Non-qualified non-recourse financing** - The provisions for this reduction are provided for within Code Section 42(k) pertaining to the At-Risk Rules. Generally, non-qualified non-recourse financing is considered to be non-recourse seller financing. In the instance where a developer acquires property, and, as a portion of the acquisition price, the purchaser provides a note to the seller, the amount of such financing provided for within this note would be deducted from the total residential costs. (Note, not applicable to widely held corporations).
4. **Non-qualified portion of higher quality unit** - Pursuant to Code Section 42(d)(3), in the instance where there exists a disproportionate standard between the quality of the non-set-aside units and those units set aside for low-income families and individuals, the developer must deduct the costs associated with those higher quality units from the total residential costs.
5. **Historic Rehabilitation Tax Credit** - In the instance where a development receives both the historic rehabilitation tax credits and low-income housing tax credits, the amount of the historic rehabilitation tax credits must be deducted from the rehabilitation portion of the total residential costs prior to the determination of the LIHTC.

Through the deduction of the above listed items, the applicant has taken the total residential costs associated with the creation of the development and filtered them into what is referred to as eligible basis, which is covered in Code Section 42(d).

To take the development from total eligible basis to total qualified basis, the developer must apply the applicable fraction as previously discussed in this Guide. The **applicable fraction** is defined in Code Section 42(c)(1)(B) as the smaller of either the unit fraction or floor space fraction:

1. **Unit Fraction** - Pursuant to Code Section 42(c)(1)(C), the unit fraction equals the amount of low-income units divided by the total number of units (vacant or occupied) within the development.

$$\text{Low-Income Units} \div \text{Total Units} = \text{Unit Fraction}$$

2. **Floor Space Fraction** - Pursuant to Code Section 42(c)(1)(D), the floor space fraction equals the total floor space attributable to the low-income units divided by the total floor space (whether or not occupied) of the property.

$$\text{Low-Income Floor Space} \div \text{Total Floor Space} = \text{Floor Space Fraction}$$

By multiplying the eligible basis, as previously determined, times the applicable fraction, the applicant will arrive at the qualified basis of the development. To determine the maximum LIHTCs allowable under the qualified basis determination, the developer must multiply the qualified basis by the applicable credit percentage rate.

For purposes of the initial analysis of the LIHTC Application, the developer should utilize **four percent** as the applicable credit percentage rate for allowable acquisition costs and new construction/rehabilitation costs utilizing federal subsidies, as provided for in Code Section 42(i)(2)(A). For all other new construction/substantial rehabilitation costs, the developer will utilize **nine percent** as the applicable credit percentage rate.

At either the date on which the building is placed-into-service or at the election of the developer, NIFA will fix the applicable credit percentage rate pursuant to Section 42(b)(2) of the Code. The applicable credit percentage rate is set each month by the Secretary of the Treasury.

In the example provided above, the maximum annual amount of LIHTCs that may be claimed under the qualified basis determination would be \$179,610 (\$42,000 + \$137,610).

Utilizing the same total residential costs as provided for above, NIFA will now provide examples of how to determine the maximum LIHTCs allowable, through the qualified basis method, under a number scenarios.

## **DEVELOPMENTS LOCATED IN A QUALIFIED CENSUS TRACT (QCT).**

Developments located in QCTs may be eligible to have their new construction/rehabilitation eligible basis increased by 30%, as provided for in Code Section 42(d)(5)(C). The increase to eligible basis, for developments located in a qualified census tract, is not allowable on the acquisition cost of existing buildings. The definition of a QCT is provided below:

**Qualified Census Tract** - Pursuant to Code Section 42(d)(5)(C)(ii), a QCT is defined as any census tract so designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income that is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent.

The Secretary of Housing and Urban Development designates those areas that will receive the additional benefits inherent by increasing the eligible basis. On an annual basis, NIFA receives a listing of these QCTs and provides the information to you on page 20 of this Guide and in the LIHTC Application.

In providing this example of how to calculate the maximum LIHTCs allowable when a development is located in a QCT, NIFA will use the example as previously provided:

TOTAL ELIGIBLE BASIS	\$ 1,050,000	\$ 1,529,000
High cost area adjustment <i>(no adjustment is allowed for acquisition costs)</i>		<b>multiplied by 130%</b>
TOTAL ADJUSTED ELIGIBLE BASIS	\$ 1,050,000	\$ 1,987,700
Multiplied by the applicable fraction	100%	100%
TOTAL QUALIFIED BASIS	\$ 1,050,000	\$ 1,987,700
Multiplied by the Applicable Credit Percentage Rate	<u>4.0%</u>	<u>9.0%</u>
<b>TOTAL AMOUNT OF LIHTC REQUESTED</b>	<b>\$ <u>42,000</u></b>	<b>\$ <u>178,893</u></b>

In this example, the new adjusted eligible basis for the rehabilitation portion of the total residential costs has been increased from \$1,529,000 to \$1,987,700, which accounts for the 30% increase. The result of this increase in eligible basis, holding all other factors constant, is that the LIHTCs allowable for the rehabilitation has increased from \$137,610 to \$178,893.

As stated previously, only those areas designated by the Secretary of Housing and Urban Development, in accordance with the previously cited Code section, may be eligible to claim this increase to new construction/rehabilitation basis (see page 20).

### **Developments Receiving Federal Subsidy**

Developments receiving below market interest rate financing funded in whole or in part through Federal funds will be required to reduce the applicable credit percentage rate associated with the new construction/rehabilitation qualified basis from nine percent to four percent.

The most common occurrence that leads to this reduction is when a developer receives financing from Rural Housing Services (RHS) (Farmers Home Administration) under its Section 515 program. This program provides long-term mortgage financing at a subsidized interest rate of one percent. This type of development would fall under the requirement that its applicable credit percentage rate be reduced from nine percent to four percent.

TOTAL ADJUSTED ELIGIBLE BASIS	\$ 1,050,000	\$ 1,529,000
Multiplied by the applicable fraction	100%	100%
TOTAL QUALIFIED BASIS	\$ 1,050,000	\$ 1,529,000
Multiplied by the Applicable Credit Percentage Rate	<u>4.0%</u>	<u>4.0%</u>
<b>TOTAL AMOUNT OF LIHTC REQUESTED</b>	<b>\$ <u>42,000</u></b>	<b>\$ <u>61,160</u></b>

In the above example, the applicable credit percentage rate was reduced from the initial nine percent to four percent, in accordance with Code Section 42(b)(2)(B). The reduction in the applicable credit percentage rate resulted in a decrease of LIHTC on the rehabilitation from \$137,610 to \$61,160.

In this example, the applicant could subtract the total principal amount of the federal below market interest rate financing from total residential costs, and in doing so would be permitted to utilize an applicable credit percentage rate of nine percent for the rehabilitation costs. Developers should consult with their tax consultant to determine which approach is most beneficial to the development.

It is important to note that some forms of Community Development Block Grant (CDBG) and HOME financing are not considered below market interest rate federal loan, as provided for in Code Section 42(i)(2)(D) and (E), respectively.

**Developments Electing to Set-Aside Less Than 100% of the Available Unit.**

As stated previously, prior to calculating the qualified basis for any development, the developer must first multiply its eligible basis by the applicable fraction. Under the two scenarios provided above, NIFA assumed that the developer set aside 100% of the available units for occupancy by low-income individuals or families.

NIFA will assume the following unit breakdown and square footage in arriving at the required applicable fraction:

Unit Composition	Number of Units	Square Footage	Total Square Footage
One Bedroom Units	25	700	17,500
Two Bedroom Units	50	900	45,000
Three Bedroom Units	<u>25</u>	1,100	<u>27,500</u>
TOTALS	100		90,000

For this demonstration, NIFA will assume that the developer of this property chose to set aside the following units for occupancy by low-income individuals and families:

Unit Composition	Number of Units	Square Footage	Total Square Footage
One Bedroom Units	17	700	11,900
Two Bedroom Units	25	900	22,500
Three Bedroom Units	<u>8</u>	1,100	<u>8,800</u>
TOTALS	50		43,200

To determine the applicable fraction, the developer will need to perform both the unit fraction and floor space fraction calculations as previously provided.

As you will recall, the formula for determining the unit fraction is:

$$\text{Low Income Units} \div \text{Total Units} = \text{Unit Fraction}$$

By utilizing this formula, the corresponding unit fraction for the unit composition and set-aside portions as provided above would be **50%** ( $50 \div 100 = 50\%$ ).

The formula for determining the floor space fraction once again is:

$$\text{Low Income Floor Space} \div \text{Total Floor Space} = \text{Floor Space Fraction}$$

Consequently, the appropriate floor space fraction for the unit composition and set-aside portions as provided above would be **48%** ( $43,200 \div 90,000 = 48\%$ ).

Upon the completion of these two calculations, the developer would determine that the applicable fraction would be the lesser of the unit fraction or floor space fraction, or as would be the case in this example, 48%:

TOTAL ADJUSTED ELIGIBLE BASIS	\$ 1,050,000	\$ 1,529,000
Multiplied by the applicable fraction	48%	48%
TOTAL QUALIFIED BASIS	\$ 504,000	\$ 764,592
Multiplied by the Applicable Credit Percentage Rate	<u>4.0%</u>	<u>68,813%</u>
<b>TOTAL AMOUNT OF LIHTC REQUESTED</b>	<b>\$ <u>20,160</u></b>	<b>\$ <u>68,813</u></b>

The developer must use the applicable fraction against both the acquisition and rehabilitation categories to properly calculate the maximum allowable LIHTC.

Only that portion of the development that is set-aside for low-income individuals and families under the LIHTC program may receive the benefits of the LIHTCs. Consequently, since the developer in this example chose to set-aside only 48% of the development for low-income individuals and families, it will only be allocated the amount of LIHTCs that corresponds to the elected set-aside. As a result of this reduction in the applicable fraction, the qualified basis was reduced, which leads to the reduction in the amount of LIHTCs that the developer can request.

## **EQUITY / FUNDING GAP DETERMINATION**

The equity/funding gap takes into consideration the total sources and uses of funds required for the completion of the new construction, rehabilitation or acquisition and subsequent rehabilitation of a particular development. The basis for this analysis can be found in Code Section 42(m)(2)(B), which states that the housing credit agency should determine the level of LIHTCs that will be necessary for the development to be financially feasible as a qualified low income housing development throughout the credit period. In arriving at this determination, the housing credit agency is instructed to review the sources and uses of funds and the total financing planned for the development (see Code Section 42(m)(2)(B)(i)) and also any proceeds or receipts expected to be generated by reason of the tax benefits (see Code Section 42(m)(2)(B)(ii)) or the syndication of the LIHTCs.

NIFA, through the process of determining the eligible basis of a particular development, has already accomplished the function of determining the total development costs associated with the completion of the development. The LIHTC Application requires the developer to supply information concerning the proposed financing to be utilized towards the completion of the development that will be used in this calculation to offset the anticipated development costs.

The final component of the equity/funding gap calculation is the determination of the proceeds to be received through the syndication of the LIHTCs. In arriving at this determination, NIFA may assume that the typical development will receive \$.75 for every dollar in LIHTCs allocated to the development. The \$.75 assumes the discounting which the investor will apply to the LIHTCs and also the cost associated with the arrangement of the limited partnership or limited liability company through a syndication firm. NIFA will utilize the equity/funding gap approach even in the instance where the developer chooses not to sell the benefits of the LIHTCs to an investor.

### **Total Residential Costs**

The total residential costs are those development costs for both the acquisition and/or new construction/rehabilitation categories. It is important to note that this calculation utilizes those development costs, which are considered ineligible under the qualified basis determination.

### **Total Sources of Funds**

The total source of funds includes all proposed or current funding that will be utilized on the development. In arriving at the total sources of funds NIFA will consider the permanent financing as opposed to interim financing. In the instance where grants are to be considered on a particular development, the applicant must include the initial amount of the grant as a source of funds under this calculation.

## Syndication Factor

The syndication factor is the anticipated value of the LIHTCs to the developer. This is the percentage of each dollar, that the investor will pay for the LIHTCs. As previously stated, the syndication factor may be assumed at \$.75 per LIHTC dollar.

The basic formula for the equity/funding gap is as follows:

$$\text{Step 1: Total Residential Costs} - \text{Total Sources of Funds} = \text{Equity Funding Gap}$$

$$\text{Step 2: Equity Funding Gap} \div \text{Syndication Factor} = \text{Total Value of LIHTCs}$$

$$\text{Step 3: Total Value of LIHTCs} \div 10 \text{ years} = \text{Annual Value of LIHTCs}$$

In conducting this example, NIFA will utilize components of the Development Cost Schedule as previously provided. In the calculation of the equity/funding gap, the costs used to reference the total uses of funds is the total residential costs, which in the previous example totaled \$2,949,000. NIFA will assume that the applicant was successful in obtaining mortgage financing equaling \$2,000,000.

Total residential costs:	\$2,949,000	\$1,050,000	\$1,529,000
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The amount of LIHTCs determined through the equity/funding gap approach is:

$$\text{Step 1: } \$2,949,000 - \$2,000,000 = \$949,400$$

$$\text{Step 2: } \$949,400 \div .75 = \$1,263,333$$

$$\text{Step 3: } \$1,263,333 \div 10 \text{ years} = \$126,333 \text{ per year.}$$

Under the equity/funding gap approach, it would be assumed that through the allocation of \$126,333 per year in LIHTCs for the next ten years, the applicant could transfer the benefits of these LIHTC to an investor for \$.75 on the dollar and receive \$949,400 in equity capital that would offset the initial funding requirement.

For the final process in arriving at the maximum amount of annual LIHTCs allowable for a development, the developer must compare the amount of LIHTCs determined under both the qualified basis and equity/funding gap approaches. As stated previously, the maximum amount of LIHTCs that will be allocated to a development will be determined by the lesser of these two approaches.

## MAXIMUM ALLOWABLE RENTS TO BE CHARGED ON SET-ASIDE UNITS

As previously discussed in the section pertaining to the requirements to be considered as a qualified low-income housing development, the developer must agree to set-aside a certain percentage of the units for occupancy by low-income individuals or families. The units that are to be set-aside for low-income occupancy must also be rent restricted.

The portion of the Code that pertains to rent restrictions is Code Section 42(g)(2). In general, the rent that is allowed to be charged to low-income individuals or families under the LIHTC program can not exceed 30 percent of the imputed income limitation applicable to the units that are set-aside. Imputed income limitation is considered to be the income that would apply to individuals occupying a unit if the number of individuals that occupied the unit were determined as follows:

1. in the case where the unit does not have a separate bedroom, one individual; and
2. in the case where the unit has one or more separate bedrooms, 1.5 individuals for each separate bedroom.

Taking the above definition into consideration, the following imputed income limitation parameters would be established:

<u>Number of Bedrooms</u>	<u>Imputed Income Limitation</u>
Efficiency	1.0 person
One Bedroom	1.5 persons
Two Bedrooms	3.0 persons
Three Bedrooms	4.5 persons, etc.

In calculating the maximum monthly rental rate that can be charged on a low-income set-aside unit, it has previously been stated that the rent may not exceed 30% of the imputed income limitation applicable to the unit. Within this 30%, the developer must discount away any and all allowances for utilities that the tenant is responsible for paying directly to the service provider, pursuant to Code Section 42(g)(2)(B)(ii).

LIHTC rent limits include an allowance for the cost of utilities (heat, lights, air conditioning, water, sewer, oil or gas). In developments where the developer pays all utilities, no adjustment in the LIHTC rent limits are needed to determine the maximum rent that can be charged for a LIHTC unit. In developments where tenants pay all or a portion of their own utilities, the rent established for a LIHTC unit must not exceed the applicable LIHTC rent limit for that unit.

Depending on whether or not the development receives additional assistance from other programs (such as RHS, Section 8, etc.), developers may be required to use precalculated utility allowances. Developers of conventionally financed buildings may either rely upon local PHA-determined utility allowances or calculate allowances themselves. If developers choose to determine utility allowances themselves, they must be able to document calculations as described in Treasury Regulation Section 1.42-10.

The calculation of the maximum rental rate establishes the ceiling that can be charged under the requirements of the LIHTC program, and not what should be charged to any particular tenant. The developer must continue to be sensitive to the prevailing market rates in establishing the rents, while being conscious of the maximum rental rate that is allowed under the LIHTC program.

The imputed income limitation calculated in the process of determining maximum rental rates does not establish the maximum family income that a prospective tenant may earn and still qualify for the housing unit. The determination as to any particular tenant’s ability to qualify for a unit is limited to their income in relationship to the established HUD median income tables that corresponds to the number of people that will reside within the housing unit.

The LIHTC maximum gross rents per unit by county can be obtained by contacting NIFA.

<b>LOCATION OF COUNTIES LISTED BY HUD AS QCT</b>
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Those properties that are considered to be in a qualified census tract must conform to the provisions in Code Section 42(d)(5)(C). The definition for a qualified census tract was provided in the section dealing with the calculation of qualified basis. Following are the Department of Housing and Urban Development Statutorily Mandated Qualified Census Tracts for Code Section 42:

<u>County</u>	<u>Census Tract Number</u>
Douglas	0003.00 0005.00 0006.00 0007.00 0080.00 0011.00 0012.00 0016.00 0019.00 0020.00 0027.00 0029.00 0032.00 0039.00 0040.00 0050.00 0051.00 0052.00 0053.00 0054.00 0059.01 0059.02 0060.00 0061.01
Sarpy	0103.02
Lancaster	0004.00 0005.00 0006.00 0007.00 0008.00 0017.00 0018.00 0019.00 0020.00 0035.00
Buffalo	9696.00
Burt	9401.00
Keya Paha	9754.00
Knox	9671.00
Scotts Bluff	9537.00
Thurston	9402.00

**VALIDATING THE ALLOCATION OF LIHTCS BY YEAR END**

After NIFA determines the feasibility of a development as an affordable housing development, and the maximum LIHTCs that can be allocated to a development, those developments that meet all requirements will be considered for LIHTCs. Those developments that are recommended for LIHTCs will then be presented to NIFA's Board of Directors for their consideration and approval.

Developers receiving a conditional reservation of LIHTCs will be required to satisfy all of the conditions present within such commitment. Once all of those conditions have been satisfied, the developer either must complete the necessary new construction/rehabilitation (commonly referred to as placing the units into service) or file for a carryover allocation prior to the end of the calendar year in which the LIHTC's commitment is issued.

A carryover allocation will allow the developer 24 months from the close of the calendar year in which said carryover allocation is issued to complete the necessary rehabilitation or new construction and place the buildings into service. Failure on the part of the developer to either place the units into service or file for a carryover allocation by the specified expiration date stated in the commitment notice can result in the termination of the LIHTCs from NIFA.

**What is required to be eligible for a carryover?**

Eligibility for a carryover allocation requires compliance with the rules set forth in Code Section 42(h)(1)(E) and Treasury Regulation Section 1.42-6.

The following outlines basic qualification procedures for carryover allocations. A carryover allocation occurs when the developer has not and will not be finishing the rehabilitation or new construction portion of the development prior to the end of the year in which the LIHTC commitment is issued.

1. Commitment fee specified in the Qualified Allocation Plan and commitment notice has been received by NIFA.
2. All conditions and requirements have been satisfactorily cleared with NIFA.
3. The developer's basis in the development (as of the end of the calendar year in which the allocation is made) is more than 10% of the developer's reasonable anticipated basis in the development (as of the end of the second calendar year succeeding the allocation year). Basis means the taxpayer's adjusted basis of land and depreciable property that is reasonably expected to be part of the development, whether or not such amounts are includable in the eligible basis of the buildings in the development under Code Section 42(d). An independent, third-party certified public accountant must certify that 10% of the developer's reasonable anticipated basis has been incurred.

## What is required to “place the development into service”?

IRS Forms 8609 are issued to developers who complete their rehabilitation or new construction. For developers applying for acquisition and rehabilitation LIHTCs, the acquisition of the property must occur in the year the development receives its LIHTC allocation. If the development will be completed prior to the end of the calendar year in which it receives its commitment notice for LIHTCs, the developer must cost certify the development prior to the expiration date stated in the commitment notice. The following outlines the basic requirements of cost certifying a development for final allocation:

1. All conditions and requirements have been satisfactorily cleared with NIFA.
2. Commitment fee and Compliance Monitoring fee have been received by NIFA.
3. Benefits and burdens of ownership have been transferred to the development owner and the federal tax i.d. number has been established.
4. The Land Use Restrictive Agreement has been executed and filed in the appropriate county real property records.
5. NIFA has been presented with a cost certification audit and evidence that the new construction or rehabilitation work has been completed.

## AREAS OF DIFFICULTY EXPERIENCED BY DEVELOPERS UNDER THE LIHTC PROGRAM

In order to provide you as much information as possible concerning the LIHTC program, NIFA will cover some of the typical areas in the development that have given previous developers difficulty.

1. **Failure on the part of the developer to provide NIFA with sufficient information in order for it to reach a determination concerning the LIHTC Application.** If the developer does not submit sufficient information to NIFA in order for a determination to be made as to either priority of the LIHTC Application, eligibility of the development under the requirements of the LIHTC program, maximum amount of LIHTCs that may be allowed on the development, etc., then NIFA will be delayed in processing the LIHTC Application. If the deficiencies under this scenario are not adequately addressed by the applicant, the property may not be considered for LIHTCs during the application round or possibly may be terminated by NIFA.
2. **Failure on the part of the applicant to properly calculate the maximum allowable LIHTCs for the development.** By not properly calculating the amount of LIHTCs that are allowable, the applicant may either overestimate or underestimate the potential LIHTC commitment. If plans and forecasts dealing with the financial structure of the development are taken into consideration, under the assumption that the initial applicant’s LIHTC estimates are correct, and NIFA subsequently recalculates the LIHTC amount at a lower level, then the developer would be faced with the prospect of re-analyzing the transaction to determine the willingness to proceed under the new LIHTC amounts.

3. **Failure on the part of the applicant to properly calculate the maximum amount of rents that would be allowable under the LIHTC program.** When the applicant improperly calculates the maximum rental rates can may be charged, and in doing so bases the proforma operating estimates on the incorrect rental rate, the reduction in the maximum allowable rental amount may adversely affect the long term estimates of operating performance, and possibly reduce the development's viability under the LIHTC program.
4. **Failure on the part of the applicant to properly satisfy the necessary year-end requirements of the LIHTC program.** As stated previously in this guide, the developer is required to either place the development into service or file the necessary documentation to receive a carryover allocation of the LIHTCs prior to the end of the calendar year in which the commitment was received by the developer. Should the developer receive a commitment of LIHTCs and fail to perform either of these two alternatives by the end of such calendar year, NIFA will terminate the LIHTC commitment.
5. **Failure on the part of the applicant to adhere to LIHTC Application round deadlines or supplemental notice deadlines issued from NIFA.** The applicant is advised to adhere to the deadlines with regards to any application round and any notice issued with regards to the development whereby NIFA is requesting additional information to complete its analysis of the development. NIFA will not accept any LIHTC Application that is filed after the posted deadline. The failure of the applicant to submit the required supplemental documentation by the specified due date may be cause for the termination of the development file.
6. **The applicant fails to provide NIFA with a complete LIHTC Application.** Much the same as discussed in issue number one, if the applicant provides NIFA with an incomplete LIHTC Application, NIFA will be required to pursue the applicant for additional documentation instead of analyzing the development for its eligibility for LIHTCs. In certain cases where the applicant fails to provide NIFA with information concerning selection criteria issues, NIFA may be forced to consider the application based upon the information initially submitted, which could reduce the priority associated with the development. As stated earlier in this guide, NIFA will not take the responsibility of insuring that criteria issues, which would be eligible to be claimed on a certain property, have been provided in a satisfactory manner. It is the responsibility of the developer to claim those criteria points that the application is eligible to receive. NIFA will take the responsibility of either confirming or denying the claims made by the developer with regards to the application exhibits.
7. **Application fails to score a sufficient number of points to be considered for LIHTCs.** When the LIHTC Application fails to score points in the required threshold criteria during a given application round, the LIHTC Application will not be considered for LIHTCs during that application round. This possibility takes on new meaning when the application cycle in which the developer is competing is the final round of any given program year. The failure to be considered during that final round would mean that the development would not be considered during that program year.

8. **The applicant fails to provide NIFA with all of the information as requested within the threshold criteria.** In order for a LIHTC Application to be considered for review, a development must first demonstrate that it meets the required threshold criteria. Consequently, the failure on the part of the developer to supply the information requested in the threshold criteria will force the delay in the review process of the development and may cause the LIHTC Application to be terminated.
9. **Failure on the part of the applicant concerning the purpose and benefits to be received from LIHTCs.** LIHTCs are an ingredient that when combined with other forms of financing will foster the creation of affordable housing. The LIHTC is a component of the overall financing package and not the whole package itself. Consequently, the developer must also seek interim and permanent debt financing as well as arrange the manner in which it will provide for the required amount of equity to complete the development. It is highly advisable for the developer to seek these other sources of funding while they are competing for the LIHTCs. Failure to consider the role of the LIHTCs in the development process and the corresponding year-end requirements may result in the developer receiving a commitment for LIHTCs, yet be unable to satisfy the provisions necessary in order to validate the LIHTC allocation.

#### **MOST COMMONLY ASKED QUESTIONS PERTAINING TO THE LIHTC PROGRAM**

The following represent a sampling of common questions asked of NIFA concerning the LIHTC program. When possible, NIFA will provide specific Code citations as a supplement to the answers provided. NIFA will not provide any opinions concerning the Code and its relationship to any particular real estate transaction - such opinions should be sought from qualified third party sources.

1. **How long does it take from the date of my LIHTC Application until I find out if I am to receive a commitment for LIHTCs?** The time between the date in which a LIHTC Application is submitted to NIFA and date on which a determination is made as to who will receive a commitment of LIHTCs may vary. After all the developments have been reviewed, NIFA will commence the process of underwriting each development to determine eligibility for LIHTCs and viability as an affordable housing property during the compliance period. LIHTC Applications that pass the underwriting process and have the highest priority will then be presented to NIFA's Board of Directors for consideration at its next scheduled meeting.
2. **What happens if my LIHTC Application is denied by NIFA for LIHTCs during an application round?** Those LIHTC Applications that either scored insufficient points or did not pass the underwriting process to receive a LIHTCs commitment may resubmit an amended application during a subsequent application round, whereby the LIHTC Application will once again undergo the full application process. Those LIHTC Applications which are denied LIHTCs on the basis that they do not qualify under the provisions of Section 42 of the Code may either require a more thorough revision or re-analysis on the part of the applicant as to its potential to qualify under the requirements of the Code.

3. **Do I need to hire a consultant for the purpose of applying for the LIHTCs?** A number of applicants have commissioned the services of consultants, whose primary responsibility is the completion of the LIHTC Application in order for the development to be considered pursuant to the rules that are at that time in effect for the LIHTC program. Although there are a number of consultants that might provide assistance to a potential LIHTC applicant, NIFA does not require the hiring of a consultant. NIFA is willing to assist a potential applicant in the understanding of the LIHTC program and the various requirements that must be met to submit a LIHTC Application. Finally, we hope that materials such as this Guide will assist you in understanding the LIHTC program so that you feel confident submitting your own LIHTC Application.
4. **Do I need to hire an independent third-party certified public accountant (CPA) or tax attorney when submitting a LIHTC Application?** As with the case in issue number three, concerning the absolute need for commissioning the assistance of a consultant, it is not believed that the potential applicant must hire a CPA or tax attorney in preparing the LIHTC Application. However, the services of a CPA or tax attorney may be required in the determination as to the requirements of the Code and their relationship to the real estate transaction in question. The use of a CPA will be required at the time of carryover allocation and placement into service, primarily for the purpose of providing NIFA with certain required certifications and audits.
5. **When I am calculating the maximum rental rate of the low-income tenants and I am not paying for electricity (or some other utility) must I estimate the actual monthly utility expense to such tenant in determining the final eligible rental rate?** The answer is **no**. The developer is not responsible for estimating the monthly utility consumption of the tenants in determining the maximum eligible rental rate. As previously discussed in this guide, the maximum rental rate takes into consideration that not more than 30% of the imputed income limitation may be charged for housing to a prospective low-income tenant. In arriving at this 30%, the developer must be aware of any utility costs that the tenant will be responsible for paying directly to the service provider. In the case where a tenant is required to pay electricity to the local provider directly, then, pursuant to Code Section 42(g)(2)(B), the developer must discount the maximum monthly rent by the applicable utility allowance as provided for under section 8 of the U.S. Housing Act of 1937. These utility allowances may be obtained from the local public housing authority and may change on an annual basis.
6. **What happens when I have leased a unit to a Section 8 recipient and the fair market rent paid through the Section 8 program exceeds the maximum rent requirements?** In the instance where a low-income tenant in a development is receiving housing assistance under section 8 of the U.S. Housing Act of 1937, and the rent payment made to the development owner exceeds that which is allowed for under Code Section 42(g)(2), the unit will not cease being an affordable housing unit as defined by Code Section 42. The point of law is found in Code Section 42(g)(2)(B) whereby gross rent will not include any payments made under the Section 8 program. Consequently, the development may receive rental assistance payments in excess of the allowable rent level and still maintain the unit as rent restricted. However, the development owner must

understand that the tenant's contribution towards rent may not exceed that amount which is allowed for under Code Section 42(g)(2).

7. **I completed the rehabilitation of a development in March of 2002 and I would like to be considered for LIHTCs. Some of the costs that are associated with this rehabilitation were incurred in 2001. May I apply for these LIHTCs in 2002 even though I completed my rehabilitation prior to submitting a LIHTC Application?** In answering a question of this nature, NIFA would turn to analyze the issues pertaining to the timing for making a LIHTC allocation and the time period over which a developer may accumulate basis. First, in considering the time for making an allocation of LIHTCs, NIFA would refer to Code Section 42(h)(1)(B), whereby it would find that an allocation of LIHTCs shall be taken into account only if it is made not later than the close of the calendar year in which the development is placed in service. Next, NIFA would determine the requirements for the placement into service of qualified rehabilitation expenditures. In answering this question, NIFA would reference IRS Advance Notice 88-116 concerning placed in service issues. IRS Advance Notice 88-116 states that under Code Section 42(e)(4)(A), rehabilitation expenditures that are treated as a separate new building are considered placed into service at the close of any 24-month period, over which such expenditures are aggregated. Consequently, the costs incurred by the developer in 2001 will be includable in basis and by completing the rehabilitation in 2002, the developer would be eligible for consideration of LIHTCs during the program year 2002.
8. **When would the purchase of an existing building qualify for the acquisition LIHTCs?** The most common provisions whereby the purchase of an existing building would be qualified for acquisition LIHTCs are (1) when the owner from which you are to acquire the property has had constant ownership of the property in question for a period of at least **10 years**, and (2) when the seller of the property is an insured depository institution in default, or from a receiver or conservator of such an institution. The RTC qualifies as a receiver or conservator of a defaulted depository institution. It is important to note that in order to receive the benefits of the acquisition credit when purchasing a property from the RTC, the development owner must file for a waiver of the 10-year Rules with the IRS. Only after such determination has been made by the IRS that the property's acquisition may waive the 10-year rule will the development owner be eligible to receive any final documentation from NIFA concerning the acquisition LIHTCs. The complete provisions under which the purchase of an existing structure may qualify for acquisition LIHTCs is provided for in Section 42(e) of the Code.

## CONCLUSION

As stated in the first portion of this Guide, NIFA's intention in providing this Guide is to familiarize you with the requirements of Section 42 of the Code and the LIHTC program. While NIFA is sure that each person may have specific questions that this information guide may not have sufficiently addressed, we hope that this information guide will provide an adequate foundation upon which you may build your understanding of this program.

NIFA always stands ready to assist you in understanding the LIHTC program and the means by which a LIHTC Application is to be presented. NIFA will offer direct assistance to any individual that requires this service in the preparation of the LIHTC application. However, NIFA will not take the responsibility of completing the application package for you.

NIFA looks forward to your continuing interest in the LIHTC program and also in the creation of additional decent, safe, and sanitary affordable housing.

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Inquiries and further questions should be directed to:  
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