

## Frequently Asked Questions

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This material is a general overview of the federal low-income housing tax credit and the criteria, requirements and policies of the Commission's Low-Income Housing Tax Credit Program. It is designed to provide basic information for potential applicants and should not be used as a substitute for professional service from legal counsel, a tax advisor, an accountant and/or a financial advisor. Refer to Section 42 of the Internal Revenue Code and the Commission's [Policies \(PDF\)](#) for more detailed information.

This information is subject to change, pending developments in federal law and/or Commission [Policies](#). If there is a conflict between this information and any requirement, condition, definition or restriction of Section 42 of the Internal Revenue Code, the [Policies](#) or a Credit Reservation and Carryover Allocation Contract (RAC) for a Project, the more restrictive one shall apply as determined by the Commission.

Capitalized words have special meanings as defined in the Glossary of the [Policies](#). Go to the [Policies](#) here: [Policies](#)

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## **1. What is the federal low-income housing tax credit (the "Credit")?**

The 1986 Tax Reform Act created the Credit under Section 42 of the Internal Revenue Code (the "Code") to assist the development of low-income rental housing by providing qualified Owners with Credit to reduce their federal tax obligations. The Credit is a dollar for dollar reduction of federal income tax liability for Owners of or investors in low-income rental housing. The Credit is available for a 10-year period subject to compliance with the requirements of the Code and the Washington State Housing Finance Commission (the "Commission"). The amount of Credit is based on the type of Project, the costs of developing a Project, the percentage of Qualified Low-Income Housing Units in a Project, and the nature and amount of financing for a Project. The Commission is the agency authorized to allocate Credit for Residential Rental Property located in Washington State (the "allocating agency").

## **2. Who can use the Credit?**

The "Owner" of a Project (an individual, corporation, Limited Liability Company or, most commonly, a Limited Partnership) which receives Credit from an allocating agency is eligible to use the Credit. Individuals are subject to the passive income and loss and at-risk limitations in the federal tax law. Certain for-profit corporations not subject to the passive income and loss and at-risk limitations are able to use an unrestricted amount of Credit each year.

## **3. How is the Credit used to produce low-income housing?**

Investors contribute equity to a Project in return for Credit, commonly through a syndication process. The investors use the Credit to reduce their federal tax liabilities and the Developer uses the investors' equity to help rehabilitate or construct the Project. Since the Developer is able to complete the Project with less debt-service financing, the Project's rents can be reduced to serve households with low incomes.

Ownership is generally structured as a Limited Partnership between the Developer and the investors who then share in the "benefits and burdens" of ownership. Typically, the Developer is the sole General Partner and the investors are Limited Partners. The Developer/General Partner manages and controls the development and operation of the Project. In order to get maximum benefit from the Credit and depreciation deductions, the investors/Limited Partners usually own at least 99% of the ownership interests and retain at least 99% of the Credits and depreciation losses while the Developer/General Partner retains the balance. The Developer/General Partner typically receives a Developer Fee and property management fee, plus a negotiated share in any cash flow profits and any residual gain or profit when the property is sold.

## **4. How do I find out the requirements to receive Credit?**

Section 42 of the Code includes the primary federal requirements for receiving Credit. Other various Code provisions and U.S. Department of the Treasury regulations include additional federal requirements which may apply to a specific Project. As the state allocating agency, the Commission is authorized to develop additional

requirements, which may be more restrictive than the federal requirements. The Commission's requirements include:

[Qualified Allocation Plan \(PDF\)](#): outlines the Commission's general selection criteria for Projects and describes the compliance monitoring requirements for Projects.

[Rules \(PDF\)](#): set forth in the principles by which the Commission administers the Low-Income Housing Tax Credit Program as codified at Washington Administrative Code 262-01-130.

[Policies \(PDF\)](#): Describe in detail the Commission's criteria, requirements and policies for: evaluating, ranking and selecting Projects for Credit; making Credit Reservations and Allocations; and administering the Low-Income Housing Tax Credit Program. The [Policies](#) include many requirements for receiving Credit in Washington State, which are more restrictive than the federal requirements.

Tax Credit Compliance Guide: describes in detail the Commission's requirements and policies for monitoring Projects which receive Credit.

**WARNING:** The low-income housing tax credit program is complex with many technical rules governing a Building's qualification for Credit, the amount of the Credit and the ability of the owner or an investor to use the Credit. If done incorrectly, fees can be forfeited, Credit can be lost and projects may fail. The Commission strongly recommends that potential applicants, lenders and investors work with their legal counsel, tax advisor, accountant and/or financial advisor regarding their participation in the low-income housing tax credit program.

## 5. What types of Projects are eligible for Credit?

Residential Rental Property: A Qualified Low-Income Housing Project may consist of apartment buildings, single family dwellings, duplexes or townhouses. It is Residential Rental Property in which a minimum percentage of the Housing Units in the Project are Rent-Restricted and occupied by Residents whose Income is at or below the appropriate Area Median Gross Income. Residential Rental Housing Units must be:

- available for the general public;
- suitable for occupancy, taking into account local health, safety and building codes; and
- used other than on a Transient Basis (with a minimum initial lease term of six months), except in the case of Transitional Housing.

Projects may give preference to individuals with special needs such as the elderly, people with disabilities, large households or homeless individuals if consistent with the Fair Housing Act.

Other eligible Projects (all of which must have a minimum initial lease term of six months) include:

- Single room occupancy (SRO) housing rented on a monthly or longer basis.
- Transitional Housing that contains sleeping, kitchen and bathroom facilities and is located in a Building:

that is used exclusively to help transition homeless individuals to independent living within 24 months; and

where a governmental entity or a Qualified Nonprofit Organization provides those individuals with temporary housing and Supportive Services to assist them in finding and keeping permanent housing.

Mixed-use Projects which include both residential rental Housing Units and commercial space; however, the commercial portion is not eligible for Credit.

Projects receiving moderate rehabilitation assistance under the Stewart B. McKinney Homeless Act of 1988.

## 6. What types of Projects are ineligible for Credit?

Generally, residential properties used for the following purposes are ineligible for Credit:

- Transient housing: a Housing Unit that does not have a minimum initial lease term of six months or does not meet the definition of Transitional Housing.
- Nursing homes, life care facilities and retirement homes providing significant services other than housing.
- Dormitories and most student housing.
- Mobile home parks and courts which are used on a Transient Basis.
- Buildings which have four or less Housing Units where the Owner or relative of the Owner lives in the Project.
- Buildings which receive assistance under the HUD Section 8(e)(2) moderate rehabilitation program.

## **7. How much Credit can a Project receive?**

Section 42 of the Internal Revenue Code specifically states that the maximum Credit given to a Project cannot exceed the amount necessary for the financial feasibility of the Project and its viability as a Qualified Low-Income Housing Project throughout the 10 year Credit Period. The amount of Credit is based on the type of Project, the costs of developing a Project, the percentage of Qualified Low-Income Housing Units in a Project and the nature and amount of financing for a Project.

## **8. What are the "9% Credit" and the "4% Credit" ("Applicable Percentages")?**

There are two Credit rates, or Applicable Percentages, a "9% Credit" and a "4% Credit", depending on the type of Project. The Applicable Percentages were initially set at 9% and 4%, but after 1987 the Applicable Percentages were adjusted on a monthly basis by the U.S. Department of the Treasury. Depending on the type of project, the present value of the Credit over a 10 year period equals 70% (the "9% Credit") or 30% (the "4% Credit") of a Project's Qualified Basis.

The "9% Credit" is available for new construction and substantial rehabilitation Projects without other federal subsidies. Substantial rehabilitation is when rehabilitation and related expenditures incurred during any 24 month period are equal to at least the greater of \$3,000 per Low-Income Housing Unit or 10% of the depreciable basis of the Building(s) as of the beginning of the 24 month period.

The "4% Credit" is available for Projects which involve acquisition of an Existing Building or for Projects which are Federally Subsidized. For the acquisition of an Existing Building to be eligible for Credit:

- at least ten years must have lapsed between the date that you acquire the Building and the date that the Building was last Placed-In-Service; and
- at least ten years must have lapsed between the date that you acquire the Building and the date of the last Substantial Improvements to the Building; and
- Substantial Improvements (which are different than substantial rehabilitation) are improvements during a 24-month period that are equal to at least 25% of the Adjusted Basis of the Building(s) before improvements.
- the Project must include substantial rehabilitation (as described earlier).
- A Project is Federally Subsidized if it includes construction or rehabilitation costs which are financed, directly or indirectly, with tax-exempt bonds or a federal loan which has interest charges below the rate for comparable market loans.

*Note:* The Commission uses 9% and 4% at the Application and Credit Reservation and Carryover Allocation stage. At the final Allocation stage, the Commission will use the actual Applicable Percentages for the month that a Credit Reservation was executed for a Project or the month that a Building was Placed-In-Service. Once selected by you at the time that you execute a Credit Reservation and Carryover Allocation Contract (RAC) for the Project, the Applicable Percentage remains the same for the 10 year Credit Period.

Refer to the [Policies Chapter 7](#), Credit Reservation and Carryover Allocation Requirements, for additional information regarding the Applicable Percentage.

## 9. How do I calculate the amount of Credit based on a Project's Qualified Basis?

To determine the amount of Credit based on a Project's Qualified Basis, you must first determine the Project's Eligible Basis, Applicable Fraction and Qualified Basis.

What is Eligible Basis? Eligible Basis means incurred costs for the Project (excluding expenses associated with any commercial or non-residential areas) which are depreciable. Eligible Basis includes:

- expenses allocable to acquisition costs of an Existing Building(s) which is rehabilitated (but excluding the Land and Land acquisition costs);
- site work associated with the Buildings (e.g. grading and excavation), but excluding off-site improvements (e.g. off-site utilities, streets and sidewalks);
- rehabilitation and new construction costs of Residential Rental Property;
- architectural and engineering fees, plus environmental reports or abatement associated with an Existing Building(s);
- interim costs such as construction insurance, construction loan fees (in some cases), and property taxes;
- Developer Fees and Consultant Fees (other than property appraisal, market study, and syndication costs), excluding costs associated with Land Acquisition;
- personal property for use by Residents, such as major appliances;
- resident relocation expenses if incurred in connection with the rehabilitation of an Existing Building; and
- the costs of facilities, such as parking facilities, common areas and swimming pools; the facilities must be functionally related to the Housing Units, have no separate fee for their use and be exclusively used by and available to all Residents.

Eligible Basis excludes expenditures that are amortized or expensed, for example:

- expenses allocable to Land and Land acquisition, including environmental reports and abatement expenses associated with the Land and demolition costs;
- expenses associated with any commercial or non-residential areas;
- permanent financing loan fees;
- relocation expenses for commercial tenants or relocation expenses incurred in connection with a Building that is demolished; and
- expenses associated with a property appraisal and Project rent up.

Additionally, there are various items which need to be deducted from Eligible Basis, including:

- federal Grants and/or Below-Market Federal Loans used to finance qualifying development costs (i.e. in order to qualify for the "9%" Credit rather than the "4%" Credit);
- non-qualified non-recourse financing;
- costs of non-qualifying Housing Units of higher quality or excess costs of non-qualifying Housing Units; and
- historic rehabilitation tax credits (rehabilitation portion only).

Eligible Basis may also be increased by 30% if the Project is located in a [Qualified Census Tract \(QCT\) or Difficult Development Area \(DDA\)\(PDF\)](#).

Refer to the [Policies Chapter 3](#), Program Limits, for additional information regarding Eligible Basis.

What is the Applicable Fraction? The Applicable Fraction is the percentage of the Building/Project that is used for Qualified Low-Income Housing Units. Since the amount of Credit is based in part on the portion of the Building/Project that is used for low-income housing, the higher the Applicable Fraction, the more Credit the

project is eligible to receive. The Applicable Fraction is the smaller of the Unit Fraction or the Floor Space Fraction for a Building/Project. The Unit Fraction means the fraction of Housing Units in a Building/Project devoted to low-income housing. The Floor Space Fraction means the fraction of the total square footage of a Building/Project devoted to low-income housing.

What is Qualified Basis? The Qualified Basis equals the adjusted Eligible Basis multiplied by the Applicable Fraction for the Building/Project. For a Project that is 100% low-income housing (a Project with an Applicable Fraction of 100%), the Qualified Basis is equal to the adjusted Eligible Basis. The Qualified Basis is the amount used for calculating the maximum amount of Credit for a Building/Project.

What is the maximum amount of Credit based on a Project's Qualified Basis? The maximum annual amount of Credit based on a Project's Qualified Basis is determined by multiplying a Project's Qualified Basis by the appropriate Applicable Percentage ("4%" and/or "9%") as selected by you at the time of the Credit Reservation and Carryover Allocation.

Refer to the [Policies Chapter 7](#), Credit Reservation & Carryover Allocation for additional information regarding the Credit Reservation and Allocation amounts.

## **10. How do I calculate the amount of Credit based on the Equity Gap?**

To determine the amount of Credit based on the Equity Gap, you must first determine the Project's Equity Gap and Tax Credit Factor.

What is the Equity Gap? The Equity Gap is the difference between the Total Project Costs and the total funding sources available for a Project. The Equity Gap is used as part of the calculation to determine the maximum amount of Credit that a Project is eligible to receive. Total Project Costs are the expenses incurred in acquiring and developing the Project, excluding any amounts attributed to commercial or other non-residential areas, Intermediary Costs and any amounts set aside for reserves. Intermediary Costs are the expenses involved in selling the Credit to raise equity capital and include Syndication fees, Partnership organization costs, reserves, broker commissions and related attorney and accounting fees. A Project's total funding sources include all government and non-government Loans and Grants, any equity contributions (excluding equity from the proceeds of the Credit), and any net residential historic rehabilitation tax credit proceeds.

What is the Tax Credit Factor? The Tax Credit Factor means the factor selected by you that represents, on a percentage basis, the net value of the Credit dollar amount available for Total Project Costs. The Tax Credit Factor depends on the market value of the Project's 10 year Credit amount to investors, discounted for its present value, less Intermediary Costs. The selection of the Tax Credit Factor is irrevocable. Once selected, the Commission will use the Tax Credit Factor from then on when it calculates the Credit Reservation and Allocation to any Building in a Project as further described in Chapter 2 of the [Policies](#). You are encouraged to research the market to determine an appropriate Tax Credit Factor for your Application.

What is the maximum amount of Credit based on a Project's Equity Gap? The maximum amount of Credit based on a Project's Equity Gap is determined by dividing a Project's Equity Gap by the Project's Tax Credit Factor. The result is the Project's 10 year maximum Credit amount; this represents the Project's equity proceeds from the Credit for the 10 year Credit Period. To determine the maximum annual amount of Credit based on the Equity Gap, divide the 10 year maximum Credit amount by ten.

Refer to the [Policies](#) Chapter 2, General Requirements, and Chapter 3, Program Limits, for additional information regarding the Equity Gap, the Tax Credit Factor and/or the Credit Reservation and Allocation amounts.

## **11. What do I do if the amount of Credit based on a Project's Qualified Basis is different from the amount of Credit based on a Project's Equity Gap?**

The Code requires that the Commission limit the amount of Credit that a Project may receive to the minimum amount necessary for the Project to be financially feasible and viable for the 10 year Credit Period. The maximum amount of Credit that a Project may receive is equal to the lesser of the maximum amount of Credit based on a Project's Qualified Basis and the maximum amount of Credit based on a Project's Equity Gap.

Refer to the [Policies](#) Chapter 2, General Requirements, for additional information regarding the Credit Reservation and Allocation amounts.

## **12. What are the general rent and income requirements for a Qualified Low-Income Housing Project?**

At a minimum, Section 42 of the Code requires that you irrevocably elect and comply with one of the following Minimum Low-Income Housing Set-Asides:

- a minimum of forty percent (40%) of the Total Housing Units in the Project must be rented to Residents with Incomes at or below sixty percent (60%) of the Area Median Gross Income adjusted for household size (the "40/60 test"); or
- a minimum of twenty percent (20%) of the Total Housing Units in the Project must be rented to Residents with Incomes at or below fifty percent (50%) of the Area Median Gross Income adjusted for household size (the "20/50 test").

The Minimum Low-Income Housing Set-Aside election applies to all Low-Income Housing Units in a Project. The amount of Credit awarded to a Project is based on the percentage of Low-Income Housing Units in the Project (i.e. the Applicable Fraction). Hence, the higher the percentage of Low-Income Housing Units in a Qualified Project, the more Credit the Project may receive. You may also make a voluntary election of an Additional Low-Income Housing Set-Aside in order to receive Allocation Criteria Points. The Additional Low-Income Housing Set-Aside may involve a lower percentage of Area Median Gross Income for all or a selected portion of the Total Housing Units in the Project. Both low-income housing set-asides are selected by you when you submit an Application and, once made, are binding upon you and your successors in interest for the entire Project Compliance Period. The Applicable Percentage of Total Housing Units in the Project for the selected low-income housing set-asides is based on the smaller of the Project's Floor Space Fraction or Unit Fraction. Each Low-Income Housing Unit must be Rent-Restricted, with the Maximum Gross Rent not exceeding 30% of the applicable Area Median Gross Income, adjusted for Imputed Household Size. Specific rent and Income limits applicable to your county are listed in the current year's Application Package.

Refer to the [Policies](#) Chapter 3, Program Limits, for additional information regarding the Minimum Low-Income Housing Set-Aside and the Additional Low-Income Housing Set-Aside.

## **13. What is an example of how to combine the Minimum Low-Income Housing Set-Aside and the Additional Low-Income Housing Set-Aside?**

In the following examples the Applicant has chosen a Minimum Low-Income Housing Set-Aside of "40/60" (which means a minimum of 40% of the Total Housing Units and all Low-Income Housing Units will be Rent-Restricted to Residents at or below 60% of the Area Median Gross Income). In addition, they made a Commitment to have an Applicable Fraction of 100% (which means that 100% of the Total Housing Units will be Rent-Restricted to Residents at or below 60% of the Area Median Gross Income). Finally, in order to get Allocation Criteria Points, they made a Commitment to provide Additional Low-Income Housing Set-Aside Units.

Points will be awarded to Projects based on the Applicant's Commitment to provide selected percentages of the Total Low Income Units for occupancy by households at or below selected Area Median Gross Income levels utilizing the Additional Low-Income Housing Set Aside Matrix provided in Chapter 6 of the [Policies](#). The Additional Low-Income Housing Set-Aside units are both rent and income restricted at the selected income levels.

Points can only be scored under a maximum of two set-aside categories. Unit and income set-aside categories selected cannot total greater than 50 points. Applications that claim Additional Low-Income Housing Set-Aside categories that total greater than 50 points will be awarded 0 points.

Example 1 – The Applicant makes the following Additional Low-Income Set Aside commitment for their 100% Low Income project with a 40/60 Minimum Low-Income Housing Set-Aside selection:

1. 40% of the Total Low Income Units set-aside @ 30% AMI = 36 points
2. 50% of the Total Low Income Units set-aside @ 50% AMI = 12 points
3. balance of 10% of the Total Low Income Units not to exceed 60% AMI = 0 points

Total Points 48

Example 2 – The Applicant makes the following Additional Low-Income Set Aside commitment for their 100% Low Income project with a 40/60 Minimum Low-Income Housing Set-Aside selection:

1. 50% of the Total Low Income Units set-aside @ 30% AMI = 44 points
2. 25% of the Total Low Income Units set-aside @ 50% AMI = 3 points
3. balance of 25% of the Total Low Income Units not to exceed 60% AMI = 0 points

Total Points 47

Points cannot be claimed in two categories whose point total exceeds 50 points.

Example – The Applicant cannot make the following Additional Low-Income Set Aside commitment for their 100% Low Income project with a 40/60 Minimum Low-Income Housing Set-Aside selection:

1. 50% of the Total Low Income Units set-aside @ 30% AMI = 44 points
2. 30% of the Total Low Income Units set-aside @ 40% AMI = 13 points
3. balance of 20% of the Total Low Income Units not to exceed 60% AMI = 0 points

Total Points 57

Because this combination seeks points in two unit and income categories that total more than 50 points, it is not allowed.

Refer to the [Policies](#) Chapter 2, General Requirements, and Chapter 6, Allocation Criteria for additional information regarding the Minimum Low-Income Housing Set-Aside and the Additional Low-Income Housing Set-Aside.

#### **14. How do I calculate the rent amounts and income limits for Residents?**

The calculations for Income and rent are determined differently. Income is based on the total number of persons residing in a Housing Unit and rent is calculated based on the number of bedrooms in a Housing Unit regardless of the number of people living in the Housing Unit. In determining the maximum Income for a household, you identify the maximum Income related to the actual number of persons in the household for the applicable Area Median Gross Income (60%, 50%, 45%, etc.) which you selected. In determining the maximum rent, you identify the maximum Gross Rent related to the number of bedrooms in a unit for the applicable Area Median Gross Income (60%, 50%, 45%, etc.) which you selected, rather than the actual number of people residing in the unit. The maximum Gross Rent cannot exceed 30% of the applicable Area Median Gross Income. Specific rent and Income limits applicable to your county are listed in the current year's Application Package. The maximum Gross Rent means the rent for a Low-Income Housing Unit, including Utility Allowances, but excluding:

- any payments under Section 8 or any comparable rental assistance program;



- any fees for supportive services paid to the Owner by a governmental assistance program or a tax exempt organization if that program or organization gives assistance for rent and the amount given for rent is not separable from the amount given for supportive services; and
- rental payments to the Owner as far as an equivalent amount is paid under the RD program.

The Utility Allowance is the amount that is credited against the maximum in Gross Rent for Resident-paid utilities.

Refer to IRS Final Regulations (TD 8520) for additional information regarding the Utility Allowance requirements.

### **15. How long must I maintain the Project as low-income housing?**

You must maintain the Project as low-income housing for a minimum of 30 years, including both the 15 year Compliance Period and an additional 15 year period (the 30 year Extended Low-Income Housing Use Period). You may also make an Additional Low-Income Housing Use Period commitment of up to twenty-two years (commencing after the 15 year Compliance Period) during which time you agree to maintain all the terms and conditions of the Regulatory Agreement, including all the applicable Commitments you made to receive Allocation Criteria Points. You also agree not to terminate the Regulatory Agreement during the Additional Low-Income Housing Use Period. After the latter of the 14th year or the end of the Additional Low-Income Housing Use Period, you may request that the Commission obtain a Qualified Contract to acquire the Owner's interest in any Building in the Project. If a qualified buyer is not secured, the Project may be converted to market-rate housing after the Three Year Period.

Refer to the [Policies](#) Chapter 1, Overview, for additional information regarding Time Periods.

### **16. What are the Commission's general conditions for potential Applicants to participate in the Low-Income Housing Tax Credit Program?**

Chapter 2 of the [Policies](#) includes a summary of the covenants, representations and warranties which you must agree to in order to receive Credit in Washington state. The covenants, representations and warranties, include, for example, compliance with:

- state and local laws;
- nondiscrimination and accessibility laws;
- federal environmental and labor laws for Projects which receive Federal Funds;
- lender and investor notices;
- Resident Income requirements and rent restrictions;
- annual notification of public housing authority and community agencies of available Housing Units;
- periodic advertisement of Housing Units; and
- attaching Lease Riders to all Residents' leases.

In addition, as a condition of receiving Credit from the Commission, you must enter into a Regulatory Agreement (Extended Use Agreement) with the Commission that applies to each Building in the Project.

- The Regulatory Agreement will include terms, conditions, obligations, restrictions, covenants, representations and warranties that address the Commitments that you make in the Application and the requirements of the Code and the Commission's Low-Income Housing Tax Credit Program.
- The Regulatory Agreement restricts each Building for the Project Compliance Period.
- The Regulatory Agreement must be recorded in first lien position as a restrictive covenant running with the Land. The Regulatory Agreement is binding upon the Land, you, each Building in the Project and all successors in interest to you. Any liens and encumbrances for Project financing that is recorded before the Regulatory Agreement must be subordinated to the interests of the Commission as reflected in the Regulatory Agreement.

Refer to the [Policies](#) Chapter 2, General Requirements, for additional information regarding the Program Conditions and the Regulatory Agreement (Extended Use Agreement).

### **17. How long do I have to complete my Project?**

Approximately two years. You must either:

- Complete all Buildings in the Project and comply with all of the Commission's Placed-In-Service Allocation Requirements by the December 31 of the same year that you receive a Credit Reservation and Carryover Allocation; OR
- Comply with all of the Commission's Credit Reservation and Carryover Allocation Requirements and obtain a Carryover Allocation from the Commission within 6 months of the date of the Credit Reservation and Carryover Allocation Contract (RAC). You would then need to complete all Buildings in the Project and comply with all of the Commission's Placed-In-Service Allocation Requirements no later than December 31 two years later.

Refer to the [Policies](#) for additional information regarding the Credit Reservation and Carryover Allocation Requirements Chapter 7, and the Placed-In-Service Allocation Requirements, Chapter 8.

### **18. What is the Commission's Maximum Development Cost per Housing Unit?**

The Maximum Development Cost per Housing Unit limits the Total Project Costs for all Qualified Projects using HUD's 221(d)(3) Statutory Mortgage Limit Schedules which are included in the current year's Application Package. The limitation on development costs applies for the purposes of determining the Equity Gap and the Credit amount. Although the costs in excess of the described limits will be excluded from these calculations, the sources to cover the excess costs will not be excluded (the Equity Gap and the maximum amount of Credit reserved or allocated to a Project will be reduced by the amount that the Total Project Costs exceed the applicable maximum development cost per Housing Unit). In determining the Equity Gap calculation, there is no deduction from Project sources of funds for that amount of financing associated with any portion of the commercial areas, unless such financing specifically identifies in its terms that it is being provided for the commercial area.

The HUD 221(d)(3) Statutory Mortgage Limit Schedules are listed by county and include different figures for elevator construction versus non-elevator construction and for Nonprofit Organizations versus all other Projects. Total Project Costs cannot exceed 110% of HUD 221(d)(3) Statutory Mortgage Limit Schedules, subject to the following exceptions:

(a) you may request in the Application to have the maximum development cost limit raised to 135% of the HUD Statutory Mortgage Limit Schedules for a Project that will be subject to: competitive bid requirements, Davis Bacon wage rates or state prevailing wage requirements.

(b) you may request in the Application to have the maximum development cost limit raised to 150% of the HUD Statutory Mortgage Limit Schedules for a Project that:

- meets the Allocation Criteria for the Special Needs Housing Set-Aside for Large Household Units;
- meets the Allocation Criteria for the Special Needs Housing Set-Aside for persons with Disabilities;
- meets the Allocation Criteria for the Special Needs Housing Set-Aside for Housing for the Homeless;
- meets the Allocation Criteria for rehabilitation Projects; OR
- the project is 25 units or less.

(c) you may request in the Application to have the maximum development cost limit raised to 175% of the HUD Statutory Mortgage Limit Schedules for a Project that meets the requirements of both items (a) and (b) above.

(d) you may request in the Application to have the maximum development cost limit raised to 200% of the HUD Statutory Mortgage Limit Schedules for a Project that consists of the rehabilitation of a Historic Property and meets the requirements of both items (a) and (b) above.

Refer to Chapter 3, Program Limits, of the [Policies](#) and the Appendix of the [Policies](#) of the current year's Application Package for additional information regarding the Maximum Development Cost per Housing Unit and the HUD 221(d)(3) Statutory Mortgage Limit Schedules.

### **19. What are the Commission's limits for Credit amount, Developer Fees, and general contractor's profit and overhead?**

The Commission has established various Program Limits that apply to all Projects seeking Credit. In determining the amount of Credit to reserve or allocate to a Project, the Commission will reduce the Project budget and/or Credit amount to reflect the following Program Limits:

Maximum Rehabilitation/Construction Contingency - The maximum amount of Credit will be determined after limiting:

- the rehabilitation contingency to 15% of the rehabilitation expenditures (including site work); and
- the new construction contingency to 10% of new construction expenditures (including site work).

Maximum Credit Per Low-Income Housing Unit - The maximum annual amount of Credit reserved or allocated to a Project is \$12,275 per Low-Income Housing Unit. For a Project located in a Qualified Census Tract or a Difficult Development Area, the maximum amount of Credit reserved or allocated is \$15,900 per Low-Income Housing Unit.

Reserves - Reserves will not be considered in Adjusted Basis, Eligible Basis or Total Project Costs for determining the amount of Credit for a Project or in determining the Equity Gap for a Project. In determining the Equity Gap calculation, there is no deduction from Project sources of funds for that amount of financing associated with any reserves, unless such financing specifically identifies in its terms that it is being provided for the reserves.

Maximum Credit Per Applicant - The Commission will limit you and each Developer, General Partner, Managing Member of a Limited Liability Company (or, if the Limited Liability Company has no Managing Member, each Company Member) and party to a Joint Venture, or any Related Party, to a maximum, in aggregate of the lesser of 2 projects or 15% of the lesser of the per capita Annual Authority available in a given year or the total Annual Authority available for that year.

Maximum Credit Per Project - The maximum Credit per Project is 10% of the lesser of the per capita Annual Authority available in a given year or the total Annual Authority available for that year.

Maximum Credit Based on Location - The amount of Credit recommended by the Commission staff for projects from King County will be limited to a maximum of 40% of the lesser of: (1) the per capita Annual Authority available in a given year; or (2) the total Annual Authority available for such year.

Maximum Developer Fee - The maximum Developer Fee is 15% of Total Project Costs, excluding the fee itself. For Acquisition/Rehab projects where the cost of rehabilitation is less than 25% of the reasonable "as is value" of the building, the maximum Developer Fee is 10% of Total Project Costs, excluding the fee itself. The Developer Fee includes all payments and compensation to the Developer, except payments made to the general contractor for its profit and overhead when an Identity of Interest exists between you and the Developer, General Partner or party to a Joint Venture. In addition, all Consultant Fees (other than architectural and engineering, property appraisal, market study, and syndication costs) must be included in the Developer Fee limits noted above.

Maximum Consultant Fees – WAC 262-01-130(8)(f)

Consultant fees (other than arms length architectural, engineering, property appraisal, market study, and syndication costs) must be included in the developer fees limit set forth above.

Maximum Contractor's Profit and Overhead - When an Identity of Interest exists between you and the Developer, General Partner, Managing Member of Limited Liability Company (or, if the Limited Liability Company has no Managing Member, each Company Member) or party to a Joint Venture, the maximum contractor's combined profit and overhead is limited to 10% of total construction/rehabilitation costs.

Refer to the [Policies](#) Chapter 3, Program Limits, for additional information regarding the Commission's Program Limits.

## **20. What types of fees do I have to pay the Commission to receive Credit?**

The Application Fee is the greater of:

- \$26 per Housing Unit (based on the Total Housing Units in the Project, including both the Low-Income Housing Units and the Market Rate Housing Units) but excluding any Common Area Units; OR
- \$1,265.

The Reservation Fee is the greater of:

- \$3,795; OR
- either: 9.5% of the total (i.e. first year) Credit Reservation amount for a Project that selects an Additional Low-Income Housing Set-Aside of at least 50% of Housing Units at 50% or less of the Area Median Gross Income); OR 12.53% of the total (i.e. first year) Credit Reservation amount for any other Project.
- You must pay at least 50% of the Reservation Fee when you execute the Credit Reservation and Carryover Allocation Contract (RAC) and you must pay the balance of the Reservation Fee by the deadline in the RAC.

The Annual Compliance Monitoring Fee for projects Placed-in-Service after March 31, 2001 is currently the greater of:

- \$45.00 per Low-Income Housing Unit; OR
- \$450 for Project with 10 or fewer Low Income Housing Units.

The Annual Compliance Monitoring Fee may be changed to cover increased compliance monitoring costs in the future.

The Transfer Fee for any Project Transfer or Assignment is \$3,162. The Transfer Fee applies to any Project Transfer occurring after you have submitted an Application for Credit. The Transfer Fee applies to each and every transfer or assignment occurring after the Application has been submitted AND for each new party, including, for example:

- an assignment or transfer of your interest in the Land, the Project or any Building;
- an assignment or transfer of an ownership interest in the Project, including an addition to or change of any ownership interest, other than a change or addition of a Limited Partner;
- if the Project is owned by a Partnership, a change in, removal of, or addition to, the General Partners (Any change in the stock ownership of any General Partner is also considered a change to the General Partners.); or
- any direct or indirect change in the ownership of the entity (whether it is a Partnership, corporation, Limited Liability Company or Joint Venture) that owns the Project.

All fees are nonrefundable.

Refer to the [Policies](#) Chapter 11, Fee Schedule, for additional information regarding the Fee Schedule.

## **21. What should I do if I plan to form a Partnership or Limited Liability Company ("LLC") to own the Project?**

You may either form the Partnership or LLC and meet the requirements outlined in the [Policies](#) in the name of the Partnership or LLC by the date you submit the Application or form the Partnership or LLC later and, subject to meeting all of the Project Transfer or Assignment Requirements in the [Policies](#), transfer the Project to the Partnership or LLC at a later date. If you submit an Application in the name of the Partnership or LLC, you must:

- Form the Partnership or LLC and include the Partnership Agreement or LLC Agreement with the Application. For a Limited Partnership, you must also include a copy of the Certificate of Limited Partnership and the Certificate of Existence/Authorization provided by the Secretary of State. For a Limited Liability Company, you must include a copy of the Certificate of Formation and the Certificate of Existence/Authorization provided by the Secretary of State.
- Site control must be in the exact same name as the Partnership or LLC (not in the name of the Developer, General Partner, Company Manager or Company Member).

If you wait to transfer the Project to the Partnership or LLC at a later date, you must comply with all of the Project Transfer or Assignment Requirements in the [Policies](#), including (for example):

- pay the \$3,162 Transfer Fee for each and every transfer or assignment occurring after the Application has been submitted; and
- at least 45 days prior to any transfer or assignment, request approval from the Commission and submit all of the required materials outlined in the [Policies](#).

Refer to the [Policies](#) Chapter 2, Program Conditions; and Chapter 9, Project Transfer or Assignment Requirements) for additional information regarding Partnerships and Joint Ventures.

## **22. What preferences does the Commission give to certain types of developers (i.e. what are the Credit Set-Asides)?**

The Commission has established the following five Credit Set-Aside categories in which Qualified Projects compete with each other:

- Qualified Nonprofit Organization 10%
- Nonprofit Organization 15% (temporarily suspended)
- Profit-motivated entities 15% (temporarily suspended)
- Rural Housing Projects 15%
- Rural Development Projects 5%
- Hope VI Projects 20% (2005-2009)

The balance of the Commission's annual Credit authority (50%) is called the "General Pool".

Projects which meet the conditions for a Credit Set-Aside category will only compete with other Projects in that Credit Set-Aside category in the initial Application ranking process. The remaining amount of per capita Credit authority is available for Qualified Projects which did not elect a Credit Set-Aside category and to Projects which selected a Credit Set-Aside but did not receive a reservation of Credit from the Credit Set-Aside.

Applicants/Owners must make a commitment for a twelve (12) year minimum Additional Low-Income Housing Use Period in order to be eligible for a Credit Set-Aside category. The Qualified Nonprofit Organization Credit Set-Aside is based on the Commission's annual Credit authority (i.e. the per capita Credit, plus any returned Credit and National Pool Credit). The other Credit Set-Asides are based only on the Commission's available annual per capita Credit. To be considered a Qualified Nonprofit Organization, the organization must be described in Section 501(c)3 or 501(c)4 of the Internal Revenue Code and have as one of its exempt purposes

the "fostering of low-income housing". To qualify for either the Qualified Nonprofit Organization Credit Set-Aside or the Nonprofit Organization Credit Set-Aside, you must meet the conditions noted in the [Policies](#), including, for example:

- providing evidence with the Application that the organization has an ownership interest and will Materially Participate in the development and operation of the Project throughout the Project Compliance Period on a regular, continuous and substantial basis;
- providing a certification that the Qualified Nonprofit Organization or Nonprofit Organization is not Affiliated With or Controlled by a for-profit organization, entity or individual;
- incorporating the Qualified Nonprofit Organization or Nonprofit Organization in Washington state and having the entity's principal office in Washington state at the time of the Application; and
- for a Partnership, ensuring all General Partners are Qualified Nonprofit Organizations or Nonprofit Organizations, depending upon the Credit Set-Aside selected.

Applicants will be only considered for one Credit Set-Aside, with the exception of Qualified Nonprofit Organizations which may be considered for both the Qualified Nonprofit Organization Set-Aside and the Nonprofit Organization Credit Set-Aside.

Refer to Chapter 3 of the [Policies](#) for additional information regarding the Credit Set-Asides and the Glossary of the [Policies](#) for definitions of "Affiliated With" and "Controlled By".

### **23. How does the Commission decide which Projects to select for Credit?**

There are Allocation Criteria which are used by the Commission staff to evaluate Projects and make recommendations to the Commission for Credit, subject to the Credit Set-Aside categories. You must select and receive a minimum of 130 Allocation Criteria Points in order for a Project to be considered for Credit. If Projects receive equal scores, priority in the recommendations for Credit Reservations and/or Allocations will be given to the Application that requests the least amount of Credit. If Projects receive equal scores and also request the same amount of Credit, priority in the recommendations for Credit Reservations and/or Allocations will be given to the Application that requests the least amount of Credit per Housing Unit.

The total possible number of Allocation Criteria Points is 200. However, no one Project can meet all the Allocation Criteria or, consequently, receive a total of 200 points. In addition, the number of points needed to qualify for Credit changes each year.

### **24. What are the Commission's current Allocation Criteria Points?**

The Commission has 13 Allocation Criteria for a total of 200 possible points. The Allocation Criteria and Points follow:

- Additional Low-Income Housing Set-Aside (maximum 50 points)
- Additional Low-Income Housing Use Period (maximum 44 points)
- Housing Needs (maximum 10 points)
- Non-Profit Sponsor (5 points)
- Special-Needs Housing Commitments
  - Farmworker Housing (35 points)
  - Housing for the Homeless (35 points)
    - for Large Households (5-10 points)
    - for Persons who are Elderly (5-10 points)
    - for Persons with Disabilities (5-10 points)
- Preservation of Federally-Assisted Low-Income Housing (10 points)
- Rehabilitation Projects (maximum 5 points) \*If Rehabilitation is part of a Community Revitalization Plan (additional 2 points)
- Developer Fees (maximum 10 points)
- Historic Property (5 points)

- Targeted Areas (maximum 5 points) \*If entire project is located in a QCT and the Project's development contributes to a Community Revitalization Plan (additional 2 points)
- Leveraging of Public Resources (10 points)
- Donation in Support of Local Housing Needs (5 points)
- Eventual Tenant Ownership (2 points)

Refer to the [Policies: Chapter 6](#) for additional information regarding the Allocation Criteria.

**25. How much Credit is available this year and how many Applications does the Commission expect to receive?**

The Commission anticipates that approximately \$12.9 of per capita Credit authority will be available for allocation to 2008 Applicants. In addition, the Commission is applying for Credit from National Pool authority. The Commission intends to allocate all of its 2008 Credit authority, including any National Pool authority it receives, during this Application round. The Commission received the following number of Applications in recent years:

- 36 Applications in 2008
- 51 Applications in 2007
- 43 Applications in 2006
- 49 Applications in 2005
- 42 Applications in 2004
- 51 Applications in 2003

The number of Applications depends upon the market, including the availability of financing and investors.

**26. How do I apply for Credit from the Commission?**

Submit your application by the deadline as posted on the WSHFC website. Applications must be received by the Commission (not postmarked) by the deadline. With your Application, submit all required attachments, with the correct Application Fee by the deadline. Use exact same Application Form or photocopies; do not submit an electronic copy.

Refer to the current year's Application Package – Introduction and the Application Form for additional information.

**27. What are the minimum requirements for my Application to be considered ("Minimum Threshold Requirements")?**

All Projects must meet the Minimum Threshold Requirements listed in *Chapter 4 of the [Policies](#)* by the Application deadline in order to be considered for a Credit Reservation and Carryover Allocation. The Minimum Threshold Requirements include:

- A completed Application submitted by the Application deadline. Include the appropriate Application Fee and all required attachments.
- Federal Identification Number for the Applicant (or all parties to a Joint Venture). If you do not have a Federal Identification Number, you may secure one by obtaining and completing an IRS Form SS4. (Please refer to the [Policies](#).)
- Site Control for all land necessary to complete the Project.
- Title report demonstrating vested ownership of Land in name of the Applicant. The title report must be dated within 60 days prior to the date that the Application is submitted and include a complete and accurate legal description which matches your Site Control evidence.
- [Market Study \(PDF\)](#) in compliance with [WSHFC Policies](#).
- Relocation plan for any tenants living in the Project, regardless of whether they will be moving during or after construction. The relocation plan must be approved by a local government agency that has

jurisdiction over tenant relocation issues. If there are tenants, the letter of approval is required even if no tenants will be relocated.

- Demonstration of consistency with the state or local Consolidated Plan.

Refer to the [Policies](#) Chapter 4, Minimum Threshold Requirements, for additional information regarding the Minimum Threshold Requirements. Also, refer to the Application and the Application Checklist included in the current year's Application Package.

## **28. What if I leave something out of my Application?**

If the Commission determines that an item is missing from a substantially complete Application, or is incorrect, or needs clarification, you will have five business days from receipt of notice to deliver the required information to the Commission. Notice will be deemed received as outlined in the [Policies](#). This provision for Correction Periods will apply throughout the Application process, until you are notified of the Tax Credit Director's determination regarding your Project. The Correction Period does not apply to any Application that is not substantially complete (i.e. substantially incomplete Applications will be canceled by the Commission).

Refer to the [Policies](#) Chapter 1, Overview for additional information regarding the Correction Period.

## **29. How will I know if my Project receives Credit?**

If your Project scores highly enough, the Tax Credit Director will notify you in writing after your Application has been reviewed to advise you whether your Project met the Minimum Threshold Requirements and other requirements and, if so, whether the Project qualifies for a Credit Set-Aside category and the Allocation Criteria Points awarded to the Project. The Commission will hold a public hearing and approve a list of Projects to receive Credit. The Executive Director will be authorized to establish Credit Reservation and Carryover Allocation Contracts (RACs) for the applicable Projects.

Refer to Chapter 6, Allocation Criteria, of the [Policies](#) for additional information about the Commission's Decisions Regarding Reservations and/or Allocations.

## **30. What can I do if I feel that my Application was not appropriately considered by the Commission?**

Any person who has a question about the Commission's Application review process or decisions, or who believes that the [Policies](#) have been violated or misapplied, should contact the Tax Credit Director and attempt to resolve the matter. If you feel that you have been treated unjustly by a determination that your Project is ineligible because of non-compliance with the Minimum Threshold Requirements, or does not qualify for a Credit Set-Aside category, or you disagree with the Allocation Criteria Points awarded to your Project, you may ask the Executive Director to review that determination by following the Decisions and Reviews procedures outlined in Chapter 13 of the [Policies](#).

Refer to the [Policies](#) Chapter 12, Decisions and Reviews, for additional information regarding Decisions and Appeals.

## **31. If my Project is selected, what will I need to do to receive a Credit Reservation and Carryover Allocation ("the Credit Reservation and Carryover Allocation Requirements")?**

If your Project is selected for Credit, you must meet all of the Credit Reservation and Carryover Allocation Requirements included in Chapter 7 of the [Policies](#) to receive a Credit Reservation. The Credit Reservation and Carryover Allocation Requirements include:

- Abiding by all Program Limits and meeting all Minimum Threshold Requirements.
- Being selected by the Commission to receive Credit.
- Having a Qualified Project which is financially viable and feasible.
- Meeting the Development Team capacity requirements.



- Meeting the property management team capacity requirements.
- Executing the Credit Reservation and Carryover Allocation Contract (RAC) and other applicable documents.
- Paying at least 50% of the Credit Reservation Fee.
- Making an Election of Applicable Percentage Month.

Refer to the [Policies](#) Chapter 7 for additional information regarding the Credit Reservation and Carryover Allocation Requirements.

### **32. What milestones will I need to meet if I cannot complete my Project this year (the "Credit Reservation and Carryover Allocation Requirements")?**

If you cannot complete the Project this year, you must comply with all of the Commission's Credit Reservation and Carryover Allocation Requirements and obtain a Credit Reservation and Carryover Allocation from the Commission by all the deadlines identified in Chapter 7 of the [Policies](#) in order to obtain up to two more years to complete your Project. The Credit Reservation and Carryover Allocation Requirements include, for example:

- Providing evidence of ownership or long-term lease.
- Completing any changes to the legal description (e.g. a land survey, partition or subdivision) consistent with the planned changes submitted with the Application.
- Providing a current title report in the exact same name as Applicant (or all parties to a Joint Venture) if owned or the person/entity with whom the Applicant has entered into a long-term lease agreement.
- Expending more than 10% of the reasonably Expected Basis and providing an Independent CPA's Certification of Costs.

**Caution:** If the Project does not correctly expend more than 10% of the reasonably Expected Basis, the Credit Reservation and Carryover Allocation is invalid. Be conservative. If in doubt, presume that the cost is not allowed.

- Providing evidence of a conditional commitment (s) for financing from private and/or public sources in an amount sufficient to meet the Total Project Costs. The written conditional financing commitment (s) must include:  
specific terms and conditions;  
an acknowledgment by the financing source of receipt of the Commission's Investor and Lender Notice;  
and  
agreement by any financing source, which has or will record a lien against the Land, to subordinate any such lien or encumbrance against the Land the interests of the Commission as shown in the Regulatory Agreement (Extended Use Agreement).
- Executing the Credit Reservation and Carryover Allocation Contract (RAC) and other applicable documents.

Refer to the [Policies](#) Chapter 7 for additional information regarding the Credit Reservation and Carryover Allocation Requirements.

### **33. What else will I need to do in order to receive a final Credit Allocation the "Placed-In-Service Allocation Requirements")?**

The Commission will issue IRS Form 8609 to you or your successors in interest for each Building in a Project, provided that you and/or the Project meets all the items listed in the [Policies](#) as "initial Placed-In-Service Allocation Requirements" and "final Placed-In-Service Allocation Requirements".

Refer to the [Policies](#) Chapter 8 for additional information regarding the Placed-In-Service Allocation Requirements.

### **34. What if I want to transfer or assign the Project?**

You may sell, transfer, lease, assign or exchange the Land, Building or Project ownership, or otherwise convey the Project or any portion of it only after complying with all the Project Transfer or Assignment Requirements included in the [Policies](#) and obtaining the prior written consent of the Commission, which will not be unreasonably withheld. You must provide notice and comply with the transfer requirements at least 45 days before any transfer or assignment. The Transfer Fee for any Project Transfer or Assignment is \$3,162. The Transfer Fee applies to each and every Project Transfer occurring after you have submitted an Application for Credit.

Refer to the [Policies](#) Chapter 9 for additional information regarding the Project Transfer or Assignment Requirements.

### **35. What are the special rules for Tax-Exempt Bond-Financed Projects?**

A Qualified Tax-Exempt Bond-Financed Project is a Project in which some portion of Eligible Basis is financed with the proceeds of tax-exempt obligations. Since Qualified Tax-Exempt Bond-Financed Projects are not subject to the state's Annual Authority, they may receive Credit without competing with other Projects so long as they comply with the Commission's criteria and requirements as described in the [Policies](#). The Commission has different requirements for Qualified Tax-Exempt Bond-Financed Projects which are outlined in Chapter 13 of the [Policies](#), including:

- minimum of 50 Allocation Criteria Points;
- can submit an Application for Credit at any time during the year subject to the limitations outlined in Chapter 13 of the [Policies](#); and
- separate fee schedule.

If interested, contact the Commission's Capital Projects Division staff and/or Low-Income Housing Tax Credit Program staff to discuss. If a Project has less than fifty percent (50%) of its financing from the proceeds of tax-exempt obligations, the Project is treated the same as any other Project. You must submit an Application by the deadline and comply with the regular criteria, requirements and policies outlined in the [Policies](#).

Refer to the [Policies](#) Chapter 13 for additional information regarding Qualified Tax-Exempt Bond-Financed Projects.

### **36. What if I have more questions?**

The Commission strongly recommends that potential Applicants review Section 42 of the Code and the [Policies](#) in detail. You are also encouraged to seek professional service from legal counsel, a tax advisor, an accountant and/or a financial advisor before proceeding with an Application.

**Caution:** The information contained in the above questions and answers is only a brief summary of the information contained in the Commission's [Policies](#) and should be utilized solely for your convenience. Please be sure to carefully review the requirements listed in the [Policies](#) and all of the requirements noted in the Application and the Application Checklist included in the Application Package.

*This page was updated on 11/06/2008.*