CHAPTER 12
LOW-INCOME HOUSING TAX CREDITS

265—12.1(16) Definitions.

"*Affiliate*" means an individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any other person, and specifically shall include parents or subsidiaries.

"*Applicable fraction*" means the fraction used to determine the qualified basis of the qualified low-income building, which is the smaller of the unit fraction or the floor space fraction, as defined more fully in IRC Section 42(c)(1).

"*Applicable percentage*" means the percentage used to determine the amount of the low-income housing tax credit, as defined more fully in IRC Section 42(b).

"*Applicant*" means any person and any affiliate of such person that submits an application to the authority requesting a tax credit allocation pursuant to these rules. Each project owner and each of the project owner's successors in interest shall be obligated to carry out the commitments made to the authority by the applicant.

"*Application*" means those forms required by the authority, including any required attachments, exhibits or other supporting materials, filed with the authority by an applicant requesting a low-income housing tax credit allocation. The application must include all information required by rule and as may be subsequently required by the authority.

"*Area gross median income (AGMI)*" means the most current tenant income requirements pursuant to the qualified low-income housing project requirements of IRC Section 42(g).

"*Board*" means the board of directors of the authority.

"*Carryover agreement and allocation and taxpayer's election statement*" means an allocation of current year tax credit authority by the authority pursuant to the provisions of IRC Section 42(h)(1)(E) and Treasury Regulations, § 1.42-6.

"*Code*" or "*IRC*" means the Internal Revenue Code of 1986 together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service relating to the low-income housing tax credit program authorized by IRC Section 42. A copy of the Internal Revenue Code and Treasury regulations relating to this program are found in the state law library and are available for review by the public.

"*Combined 30 percent and 70 percent of the present value of the credit*" means the total amount of credit calculated at either 4 percent or 9 percent used to calculate the total number of credits requested per unit for a project.

"*Compliance period,*" as defined in IRC Section 42(i)(1) as amended to January 1, 1986, means, with respect to any building, the period of 15 consecutive taxable years beginning with the first taxable year of the credit period.

"*Control*" (including the terms "controlling," "controlled by," "under common control with," or some variation or combination of all three) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person or affiliate thereof, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50 percent of the general partner interest in a limited partnership, or designation as a managing general partner or the managing member of a limited liability company.

"*Cost certification procedures*" means those procedures described by these rules for the filing of requests for IRS Form 8609 for projects placed in service under the low-income housing tax credit program and for carryover agreements and allocations and taxpayer's election statements.

"*Credit*" means the low-income housing tax credit issued pursuant to the program, IRC Section 42 and Iowa Code section 16.52.

"Credit period" means, with respect to a building within a project, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the project owner, the succeeding taxable year, as more fully defined in IRC Section 42(f)(1).

"Declaration of land use restrictive covenants (LURA)" means an agreement between the authority, the project owner and all successors in interest to the project owner which encumbers the project with respect to provisions stipulated in IRC Section 42(h), this chapter and Iowa Code section 16.52.

"Determination notice" means a notice issued by the authority to the owner of a tax-exempt bond project which states that the project may be eligible to claim low-income housing tax credits without receiving an allocation of credits from the state housing credit ceiling, sets forth conditions which must be met by the individual project before the authority shall issue the IRS Form(s) 8609 to the project owner, and specifies the amount of tax credits necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

"Difficult development area" means any area that is so designated by the Secretary of the United States Department of Housing and Urban Development (HUD) as an area which has high construction, land, and utility costs relative to area median family income.

"Eligible basis" means, with respect to a building within a project, the building's eligible basis as defined in IRC Section 42(d).

"Equity gap" means the difference between the total sources of financing for the project and the total project costs that is to be filled with the proceeds of the credit.

"Evaluator" means members of the authority staff or temporary staff hired to review and score the applications after October 18, 1999.

"Fannie Mae" means the Federal National Mortgage Association.

"FHLB" means the Federal Home Loan Bank.

"Forward funding" or *"forward commitment"* shall have the same meaning as described in IRC Section 42(b)(2)(A)(ii)(I) and 42(h)(1)(C).

"Freddie Mac" means the Federal Home Loan Mortgage Corporation.

"General requirements" means items at a construction site necessary to complete the job. For example, general requirements may include power to the site, toilets, signage or other barriers.

"Governmental entity" means federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities, their employees, board members or agents.

"HART team" means the housing assistance review team. It is a committee comprised of representatives of governmental and quasi-governmental entities which administer affordable housing programs that may contribute financing and market information to low-income housing projects eligible for low-income housing tax credits. Members of the HART team include representatives from the authority, the Iowa department of economic development, the United States Department of Agriculture, the Federal Home Loan Bank of Des Moines, HUD and Fannie Mae.

"Housing credit agency" means the authority. Pursuant to Iowa Code section 16.52, the authority is charged with the responsibility of allocating low-income housing tax credits pursuant to IRC Section 42(h)(8)(A) and pursuant to Iowa Code section 16.52.

"Housing project for older persons" shall have the same meaning as described in 42 U.S.C. Section 3607(b)(2).

"Housing support services" means medical and psychological counseling, financial counseling, employment counseling, nutritional counseling, housing and placement counseling, and assistance in applying for other benefits and services such as child care and transportation.

"HUD" means the United States Department of Housing and Urban Development, or its successor.

"Intermediary costs" means costs associated with the sale or use of credits to raise equity capital. Such costs include, but are not limited to, financing fees and expenses, soft costs, syndication costs, developer fees and project reserves as described in subrule 12.6(47), numbered paragraphs "26" to "41."

"*IRS*" means the Internal Revenue Service, or its successor.

"*Low-income housing credit allocation amount*" means, with respect to a project or a building within a project, the amount of credit the authority allocates to a project and determines to be necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the compliance period.

"*Low-income housing tax credit (LIHTC)*" means the credit determined under IRC Section 42(a) for any taxable year in the credit period equal to the amount of the applicable percentage of the qualified basis for each qualified low-income building.

"*Low-income unit*" means any residential rental unit if such unit is rent-restricted and the occupant's income meets the limitations applicable as required for a qualified low-income housing project.

"*Market study*" means a study of the rental market conditions for the communities where projects are or will be located. An outline of the market study requirements prepared by the authority is incorporated by this reference and pursuant to 265—subrules 17.4(2) and 17.12(2).

"*Metropolitan statistical area (MSA)*" means a central city containing at least 50,000 people with a total metropolitan population of at least 100,000.

"*Organized community revitalization program*" means a strategic plan adopted by a political subdivision that designates neighborhood plans, area plans, or comprehensive plans that address housing needs.

"*Per capita component*" means an item of the state housing credit ceiling, as defined in IRC Section 42(h)(3)(C)(i). The per capita component is based upon the calendar-year population estimates as determined by IRC Section 146(j) and promulgated on an annual basis by an IRS Service Notice.

"*Person*" shall have the same meaning as contained in Iowa Code chapter 4.

"*Program*" means the low-income housing tax credit program.

"*Project*" means a low-income rental housing property the owner of which represents that it is or will be a qualified low-income housing project within the meaning of IRC Section 42(g). With regard to this definition, the "project" is that property which is the basis for the application.

"*Project owner*" or "*owner*" means any person or affiliate thereof that owns or proposes to own and develop a project or expects to acquire control of a project consistent with control documents provided by the owner to the authority as part of the application for low-income housing tax credits.

"*Property*" means the real estate and all improvements thereon which are the subjects of the application, including all items of personal property affixed or related thereto, whether currently existing or proposed to be built thereon in connection with the application.

"*Qualified allocation plan (the QAP)*" means an allocation plan as described in these rules and in conformance with IRC Section 42 and Iowa Code section 16.52 and incorporated herein by this reference and pursuant to 265— subrules 17.4(2) and 17.12(2). The requirements set forth in these rules also apply to tax-exempt bond financed projects, which may be eligible for credits apart from the annual state housing credit per capita component. Tax-exempt bond financed projects must also satisfy the requirements for allocation under the qualified allocation plan.

"*Qualified basis*" means, with respect to a building within a project, the building's eligible basis multiplied by the applicable fraction, within the meaning of IRC Section 42(c)(1).

"*Qualified census tract*" means any census tract which is so designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, in which 50 percent or more of the households have an income which is less than 60 percent of the area median family income for such year.

"*Qualified nonprofit organization*" or "*nonprofit*" means an organization that is described in IRC Section 501(c)(3) or (4), that is exempt from federal income taxation under IRC Section 501(a), that is not affiliated with or controlled by a for-profit organization, and includes as one of its exempt purposes the fostering of low-income housing within the meaning of IRC Section 42(h)(5)(C) and is allowed by law or otherwise to hold and develop property.

"Qualified nonprofit project" means a project in which a qualified nonprofit organization has control (directly or through a partnership or wholly owned subsidiary as defined in IRC Section 42(h)(5)(D)(ii)) and materially participates (within the meaning of IRC Section 469(h)) in its development and operation throughout the compliance period.

"Real estate owned (REO) projects" means any existing residential development that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property owned by HUD, Fannie Mae, Freddie Mac, a federally chartered bank, a savings bank, a savings and loan association, the FHLB, a federally approved mortgage company or any other federal agency.

"Recovered credits" means either credits previously awarded to a project or projects that cannot use all the credits the project was awarded or credits from projects that cannot be placed in service by the owner.

"Rehabilitation expenditure" means amounts incurred in connection with the rehabilitation which the project owner represents to be "rehabilitation expenditures" within the meaning of IRC Section 42(e)(2).

"Rental assistance" means any assistance received by a low-income person from a governmental unit or other entity that permits the person to live in rental housing.

"Rural project" means a project located in Iowa within an area which:

1. Is situated outside the boundaries of an MSA; or
2. Is situated within the boundaries of an MSA if it has a population of not more than 20,000 and does not share boundaries with an urbanized area; or
3. Is located in an area that is eligible for funding by the United States Department of Agriculture-Rural Development.

"Selection criteria" means the criteria described in this chapter to determine the housing priorities of the state under the low-income housing tax credit program.

"State housing credit ceiling" means the limitation imposed by IRC Section 42(h) on the aggregate amount of housing credit allocations that may be made by the authority during any calendar year, as determined from time to time by the authority in accordance with IRC Section 42(h)(3).

"Tax-exempt organization" means an entity which is described in IRC Section 501(c)(3) or (4), and which is either registered or qualified to conduct business in the state or in the governmental unit wherein the project may be situated.

"Threshold criteria" means criteria used to determine the project's qualifications that are the minimum level of acceptability for consideration under the credit program. If a project fails to meet threshold criteria, it shall not be scored.

"Unallocated or unreserved credits" means credits that are not awarded by the authority during its most recent round of financing or are returned to the authority during the current year. These credits would be eligible for redistribution in accordance with the rules of the authority.

"USDA-Rural Development (USDA-RD)" means the rural housing division of the United States Department of Agriculture.

"Utilities" means gas, electricity, water and sewer service.

265—12.2(16) Purpose and objectives. The purpose of the low-income housing tax credit program is to provide an incentive to developers to construct or to acquire or to substantially rehabilitate, or some combination thereof, affordable rental housing units throughout the state for qualified individuals and families. These individuals or families must have an income that is at 60 percent or below the area median gross income. The units must remain in compliance for a minimum period of 15 years. The intent of the program is to allocate tax credits to those projects which best meet and serve the objectives outlined as follows:

1. To assist in the creation of affordable housing units for individuals and families which serve qualified individuals and families for the longest periods of time.

2. To assist in the creation of affordable housing units for individuals and families at the lowest income levels.

3. To assist in the creation of affordable housing units in areas of the greatest need for such housing in the state.

4. To encourage the preservation and rehabilitation of existing affordable housing units.

5. To encourage the construction of new affordable housing units.

6. To encourage the efficient use, leveraging, and coordination of various federal, state, community and private sources of funding and incentives to finance low-income housing development.

7. To assist in the creation of quality, decent, safe and affordable housing units for limited income individuals and families at reasonable costs.

265—12.3(16) Fees. The authority shall collect the following fees for the low-income housing tax credit program.

12.3(1) A nonrefundable $300 application processing fee for projects with up to 12 units. The authority shall collect a nonrefundable application fee of $500 for proposed projects with 13 or more units. The authority may accept checks made payable to the Iowa Finance Authority for the application fee. The fee shall be due with the application. An application shall not be reviewed or scored unless the application fee accompanies the application.

12.3(2) The authority shall collect a reservation fee of 5 percent of the total annual credit amount for projects receiving $100,000 or less in annual credit, and a reservation fee equal to 7 percent of the total annual credit shall be required for projects receiving $100,001 or more in annual credit. The reservation fee is nonrefundable.

12.3(3) A compliance monitoring fee shall be charged once the project has been placed in service, but prior to the issuance of IRS 8609 form after the authority has received, reviewed and approved the IRS 8609 request package. The compliance monitoring fee shall be charged one time. A compliance monitoring manual may be provided with the IRS 8609 forms free of charge. The compliance fee shall be 2.55 percent of the total annual credit amount awarded to the owner. The compliance monitoring manual is incorporated in this rule by this reference and pursuant to 265—subrules 17.4(2) and 17.12(2).

265—12.4(16) Application process and general information. Upon request, the authority shall forward an application packet to a potential applicant. As may be necessary for the benefit of the program, the authority may distribute unsolicited application packets to local financial institutions, regional councils of government, landlord associations, and other rental housing groups.

12.4(1) The application packet shall consist of the qualified allocation plan as described in these rules and the application form prepared by the authority to reflect the requirements of the qualified allocation plan.

a. All applications shall be typed, not handwritten. The application form provided by the authority must be used. The authority may supply the application form to any applicant in electronic form upon request.

b. Applications submitted on forms that have been retyped or on a form other than the application form supplied by the authority shall not be accepted.

c. All exhibits shall be labeled to match the applicable page of the application and must be submitted in numerical order.

12.4(2) For purposes of the applications due for the 1999 cycle of tax credit reservations, the authority shall consider only the applications, attachments and supporting documents filed on October 1, 1998, for the 1999 cycle and amendments filed pursuant to subrule 12.4(3). All applications filed on October 1, 1998, shall be considered newly filed as of October 7, 1999. All amendments filed between and including October 2, 1998, and March 9, 1999, shall be deemed part of the application filed on October 7, 1999. Any site visit conducted by the authority between August 1, 1999, and October 6, 1999, may be relied upon during the scoring of these applications after October 6, 1999.

12.4(3) Amendments to the applications filed on October 7, 1999, shall be due on October 18, 1999. Thereafter, no amendments to the 1999 applications shall be accepted. Except as provided in this subrule, applicants may amend their applications to conform with or address changes made in the qualified allocation plan as described in these rules.

a. Applicants may change the site described in the application as of March 9, 1999, only if the change in site was caused by a delay necessitated by the contested cases consolidated under 99 IFA 001 initially filed on March 23, 1999, and the ruling entered on July 2, 1999. An applicant shall certify in writing to the authority that the site change is due to delay necessitated by the contested case and the ruling and provide adequate evidence of the need for a site change. Adequate evidence shall include but is not limited to a letter notifying an applicant that an option had lapsed or a contract clearly showing that the passage of the option date qualifies as adequate evidence.

b. For the 1999 round every applicant shall provide an update confirming all of its financial commitments whether the commitments are firm or conditional. The applicant shall make these amendments to its sources and uses of funds included in the application.

c. In the event an applicant intends to syndicate or place tax credits, updated information regarding the syndicator or the placement of the credits shall be included as an amendment to the applicant's application. The amendment shall include the proceeds from the tax credit, proceeds from historic tax credits, the date the funds will be paid, the type of offering, the type of investor, the name of the fund, the name of the syndicator, the address, state, and ZIP code, and the telephone number. A copy of any agreement or contract relating to the syndication or placement of partnership interest must be included with the amendment.

12.4(4) Incomplete applications shall not be scored. An incomplete application is any application that is missing any document required by these rules. The authority will not notify an applicant if required documents are missing from the application.

12.4(5) The authority shall designate a single contact person for the low-income housing tax credit program for the 1999 cycle. The contact person shall not be an evaluator. Questions concerning the qualified allocation plan and the application may be addressed in writing to the authority's contact person by mail, E-mail, hand delivery or facsimile, no later than October 13, 1999, 3 p.m. Central time. Questions received and answers the authority provides shall be mailed or faxed on October 14, 1999, to all applicants and posted on the authority's Web page under Frequently Asked Questions regarding the 1999 tax credit round. Responses shall not be E-mailed to applicants. Oral questions shall not be accepted. The authority shall not be bound by any oral representation made in connection with the application or award of tax credit reservations. For the 1999 cycle, the authority shall have an in-person question and answer period for all applicants regarding the 1999 applications on October 13, 1999, for any applicant wishing to attend. The authority shall notify all applicants of the time and place of the meeting by fax prior to the meeting.

12.4(6) The authority is not responsible for any costs incurred by an applicant which are related to the preparation or delivery of the application or any other activities carried out by the applicant related to its response to the qualified allocation plan and application.

12.4(7) By submitting an application, an applicant agrees that the authority shall copy the application for purposes of facilitating the evaluation or to respond to requests for public records. The applicant agrees that such copying shall not violate the rights of any third party.

12.4(8) All applications become property of the authority and shall not be returned to the applicants even in the event that no tax credits are awarded. At the conclusion of the selection process, the contents of all proposals shall be placed in the public domain and be opened to inspection by interested parties subject to the provisions of Iowa Code chapter 22.

12.4(9) All information submitted by an applicant may be treated as a public record by the authority unless the applicant properly requests that the information be treated as confidential information at the time the application is submitted. Public records shall be copied by the authority as necessary to comply with Iowa's public record laws and to be consistent with the authority's rules.

a. Any request for confidential treatment of information must be included with the application and must enumerate the specific grounds in Iowa Code chapter 22 which support treatment of the material as confidential and must indicate why disclosure is not in the best interest of the public. The request must also include the name, address, and telephone number of the person authorized by the applicant to respond to any inquiries by the authority concerning the confidential status of the materials.

b. In the event the authority receives a request for the release of information that includes material an applicant has marked as confidential, the authority shall provide a written notice by fax to the applicant regarding the request as soon as practicable. Unless otherwise directed by a court of competent jurisdiction, the authority shall release the requested information within 15 days after faxing and mailing a written notice to the affected applicant.

c. The applicant's failure to request confidential treatment of material pursuant to this subrule and the relevant laws and administrative rules shall be deemed by the authority as a waiver of any right to confidentiality that the applicant may have had.

12.4(10) The amount of tax credits available in Iowa in each calendar year shall reflect the sum of the amounts allowed as the state credit ceiling under IRC Section 42(h)(3)(C). One or more reservation cycles may be established for each calendar year. The executive director, in consultation with authority staff, may determine in each calendar year the dates for each reservation cycle and the amount of tax credit (up to 100 percent of the state credit ceiling) available for reservation in each cycle. The authority shall maintain a list of persons who have expressed an interest in receiving a copy of the QAP and the application. Notices announcing specific dates and the amounts of tax credit available for reservation in each cycle shall be mailed to the persons on the list and posted on the authority's Web site at http://ifahome.com or otherwise made available prior to the beginning of each reservation cycle. The notice shall be deemed to have been given for the 1999 cycle.

12.4(11) The following conditions shall apply to the 1999 cycle of tax credits:

a. Any credit not reserved at the end of the first cycle shall be carried over to the next cycle, if any, for the same purpose.

b. Any unallocated or recovered credits or a combination of both may be awarded as part of the 1999 cycle of awards for tax credits, or may be carried over to 2000 at the discretion of the board.

c. The board may establish a waiting list to distribute unreserved or recovered credits for 1999 and as provided in rules 12.11(16) and 12.13(16). This is not a commitment to forward fund any project or ensure that a project shall be funded in another round of tax credit reservations.

12.4(12) Any determinations by the authority in connection with any aspect of the low-income housing tax credit program shall not be construed to be a representation or warranty to any person, sponsor, investor, or lender as to the feasibility or viability of any project. The authority's review of the applications and the supporting exhibits is for its own purposes. The authority makes no representations or warranties to owners, investors, lenders or any other persons as to compliance with the Internal Revenue Code, the Iowa Code, Treasury regulations or any other laws or regulations governing low-income housing tax credits.

12.4(13) The authority shall make a determination as to the amount of credit as required by IRC Section 42(m)(2) at each of the following times:

1. When the application is made.
2. When the allocation is made.
3. When the project is placed in service (if subsequent to allocation).

Prior to each determination above, the applicant shall certify to the authority the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) to the project.

12.4(14) The authority may request additional information from an applicant. The information requested shall not be used to amend any category that is scored except as described herein. The information obtained from the applicant shall be reduced to writing and shall be added to the project file.

12.4(15) The authority may make site visits as it deems necessary to review proposed project sites. The staff shall prepare a written document describing the site and make it available to the board for review in the consideration of awarding tax credits to a particular project. The written document may include photographs including electronic or digital photographs to describe the site. Applicants may not be notified of a site visit unless access to a building is required.

12.4(16) For the 1999 round, once the time has expired for making amendments to the applications, neither the applicants nor any person on behalf of the applicant may contact the evaluators assigned by the authority to review and score the applications for the cycle under consideration. Any such contact may require the authority to reject the applicant's proposal. Applicants shall not contact board members to discuss the merits of the applicant's application.

12.4(17) Applicants who have no previous history of receiving tax credit allocations in the state of Iowa must submit a certification to the authority concerning the applicant's previous participation and histories as principals in rental housing projects**.**

12.4(18) In the event an applicant is seeking funding from any other public funding source, including but not limited to the housing assistance program administered by the authority (HAF), HOME funds, a program administered by the department of economic development, or FHLB loan or grant funds or USDA-RD funds, the applicant must submit a copy of the application for the funds or a letter of intent to fund from the appropriate funding source at the same time the application for tax credits is submitted. For the purpose of the 1999 cycle, the applicant must submit a letter indicating that funding previously awarded remains in place or will be awarded or provide adequate evidence of financial feasibility without one of these funding sources.

265—12.5(16) Nonprofit set-aside.

12.5(1) In accordance with IRC Section 42 and Iowa Code section 16.52, at least 10 percent of the annual state housing credit ceiling must be set aside for qualified nonprofit organizations which own an interest in and materially participate in the development and the operation of a qualified low-income housing project. This credit amount cannot be used for any other purpose, and any unused credit portion may be carried over at the end of the allocation year. Any amount of the credit carried over at the end of the allocation year shall be used to fund nonprofit projects during the following year.

12.5(2) The authority shall allocate housing credits from the 10 percent set-aside to qualified nonprofit organizations based upon the selection criteria and scoring and other factors described in these rules. Nonprofit applicants shall be scored with all of the for-profit applicants except that the 10 percent nonprofit set-aside shall be available in its entirety beginning with the first cycle, until fully allocated. In the event the nonprofit set-aside is exhausted, projects proposed by qualified nonprofit organizations shall be permitted to compete for the remaining 90 percent of the annual state credit ceiling.

265—12.6(16) Application contents. Applicants shall be required to respond to the following questions or provide the following information in the application prepared by the authority:

12.6(1) Identify the type of low-income housing tax credit requested.

12.6(2) Identify whether the applicant is requesting credit from the nonprofit set-aside, housing assistance fund, HOME, or Federal Home Loan Bank.

12.6(3) Identify project information including legal name of owner, whether the owner is formed or will be formed, the name of the general partner or managing partner, or both.

12.6(4) Identify the contact person for the project, including address, telephone number, fax number and E-mail address, if applicable.

12.6(5) Identify the name of the project, the project address including all buildings, the city, the ZIP code, the census tract, census block and the county.

12.6(6) Identify whether the project is in a metropolitan statistical area.

12.6(7) Identify whether the project is in a qualified census tract or high-cost area.

12.6(8) Identify the congressional district, the state senate district and the state house district in which the project is located.

12.6(9) Calculate the applicable fraction using the number of low-income units, the total number of units in the project, the percentage of low-income units, the total floor space of the low-income units measured in square feet, the total floor space of all units measured in square feet, and the percentage of floor space of low-income units.

12.6(10) Identify other project characteristics including the total number of buildings, the gross floor area of all buildings in the project, the residential floor area, and the nonresidential or commercial floor area.

12.6(11) Identify the types of units in the project including detached housing, transient housing, townhouse, row house, residential condominiums, detached single family, multifamily rental residential, garden apartments, single-room occupancy housing, or other type of housing that is specified in the application.

12.6(12) Identify whether the building has an elevator, basement and the number of stories in the building.

12.6(13) Identify whether the units have been targeted to specific populations including housing projects for older persons, family (three or more bedrooms), units specifically designed for persons with disabilities, persons on the public housing waiting list, persons needing transitional housing, or other targeted groups as identified by the applicant. The applicant must indicate the number of units for each target population.

12.6(14) Identify accessory buildings and areas, recreation facilities, commercial facilities, the total number of parking spaces, and the total number of garages.

12.6(15) Identify whether the building has four or fewer units any of which will be occupied by the owner of the building or any person related to the owner.

12.6(16) Identify whether the site is controlled by the applicant, the owner or taxpayer or some combination thereof for the project and describe the site control form, i.e., purchase contract, option, recorded warranty deed, executed long-term lease through compliance and extended use period.

12.6(17) Identify information regarding the form of site control including the expiration date of the contract or option, the total cost of the land, the exact area of the site, the name of the seller, the seller's address and telephone number.

12.6(18) Identify whether the site currently has proper zoning for the project.

12.6(19) Identify whether the site is the subject of a current request for rezoning.

12.6(20) Identify whether all utilities are presently available at the site.

12.6(21) Identify which utilities need to be brought to the site and describe what actions are required to bring utilities to the site.

12.6(22) Identify any activities anticipated to be located within a 100-year flood plain.

12.6(23) Identify whether the applicant is a for-profit entity or a not-for-profit entity and include the name of the entity, the contact person, the address, the city, state and ZIP code for the entity, the telephone number, fax number and E-mail address for the applicant.

12.6(24) If the applicant is a partnership, identify the name of the partnership, the type of partnership, the federal identification number for the partnership, and the names of each of the partners indicating which are the general partners, the partners' share of ownership and the telephone number for each partner.

12.6(25) If the applicant is a corporation, identify the name of the corporation, its federal identification number, the names and titles of the corporate officers and shareholders, an indication of the number of shares owned by each shareholder, and the telephone numbers of the officers and shareholders.

12.6(26) If the applicant is a limited liability company, identify the name of the limited liability company, its federal identification number, the names and titles of the managers, officers and members, an indication of the number of members and the telephone numbers of the managers, officers and the members.

12.6(27) Identify all projects in which the applicant(s) or general partner(s) has received an allocation of low-income housing tax credits or sold a project which received an allocation of low-income housing tax credits. Additionally, if the applicant has not received tax credits for projects in Iowa, additional information shall be required by the authority. An applicant shall be required to describe all previous projects and certify the project list.

12.6(28) Identify each member of the development team for a project. An applicant must submit a résumé that lists qualifications, address, and telephone number. The development team includes the applicant, developer, general partner, majority shareholder, contractor, architect, management company, the sponsoring organization for the development team member, consultant, tax accountant, attorney, engineer, and any other person assisting with the application or project. Identify the function for each person on the development team. An applicant must also identify whether any member of the development team has an indirect or direct financial interest or other interest with any other member of the development team. The applicant must identify the nature of the interest. If there is no identification of interests, the applicant should list "None."

12.6(29) An applicant that seeks a portion of the nonprofit set-aside must demonstrate that it owns an interest in the proposed project and that it is materially participating in the development and operation of the project throughout the compliance period. Consistent with IRC Section 469(h), "materially participating" means an activity only if the nonprofit is involved in the operations of the activity on a basis which is regular, continuous and substantial. The nonprofit must identify that it is an organization described in paragraph (3) or (4) of IRC Section 501(c) and is exempt from tax under Section 501(a); that one of its exempt purposes includes fostering low-income housing; or that it is not affiliated with or controlled by a for-profit corporation.

12.6(30) Describe the nonprofit's ownership interest or percentage of ownership, or both, in the project.

12.6(31) Describe the nonprofit's participation in the development and operation of the project, including management, social services, development and funding.

12.6(32) Describe any support services to be offered by the nonprofit to tenants of the project and where these services will be offered.

12.6(33) Identify the names of its board members and its officers.

12.6(34) Identify all paid full-time staff and sources of funding for annual operation expenses and current programs.

12.6(35) Indicate whether the nonprofit applicant's ownership of the project will remain the same throughout the compliance period.

12.6(36) Indicate whether it is a certified community housing development organization (CHDO).

12.6(37) Identify how many buildings, if any, will be acquired for the proposed project. An applicant must also indicate whether the buildings are currently under the control of the project owner and, if not, when the buildings will be under the control of the project owner for acquisition. An applicant must list the buildings under its control, the type of control, the expiration of the control document, the number of units and the acquisition cost of the building.

12.6(38) Identify whether the building or buildings acquired or to be acquired were acquired from a related party or an unrelated party.

12.6(39) Identify whether the building or buildings acquired or to be acquired with buyer's basis are or are not determined with reference to seller's basis.

12.6(40) Identify whether the building or buildings were acquired or are to be acquired from an insured depository institution in default or from a receiver or conservator of such institution. If so, an applicant must identify the name of the institution.

12.6(41) Identify whether the building or buildings were acquired or are to be acquired from an owner in default or as a result of foreclosure. If so, an applicant must identify the name of the owner.

12.6(42) Identify whether the building or buildings were acquired or are to be acquired from a governmental unit or a qualified nonprofit organization. If so, an applicant must identify the governmental unit or the nonprofit organization.

12.6(43) Identify whether the building or buildings were acquired or are to be acquired from an owner who used such residence for no other purpose than the owner's principal residence. If so, the applicant must identify the name of the owner.

12.6(44) An applicant must confirm eligibility under IRC Section 42(d)(2)(B)(ii) (the ten-year rule) by listing each building by building address, the date the building was placed in service by the owner from whom the building was or will be acquired, the date the building was or is planned for acquisition by the applicant, and the number of years between the date the building was last placed in service and the expected date of acquisition. If the number of years for any building is less than ten years, an applicant must explain any exception under the Internal Revenue Code, which would make the building eligible for credit under IRC Section 42(d)(2)(B)(ii).

12.6(45) If the applicant is proposing to rehabilitate a building or several buildings, information regarding rehabilitation expenditures for each building must be provided. An applicant must identify, with respect to each building, the rehabilitation expenditures as defined in IRC Section 42(e)(2) which shall be allocable to or substantially benefit the affordable units in such building. An applicant must show the calculations for whether the amount of rehabilitation expenditures is at least equal to the greater of 10 percent of the expected adjusted basis of the building or $3,000 rehabilitation expenditure per low-income unit. Additionally, an applicant must indicate that all buildings in the project qualify for the exception provided for in IRC Section 42(e)(3)(B) regarding the 10 percent basis requirement or that all the buildings qualify for the exception provided for in IRC Section 42(f)(5)(B)(ii)(II) regarding the $3,000 per unit requirement or that there are different circumstances for each building as described by an applicant.

12.6(46) Identify whether the project involves the relocation of tenants and describe any relocation assistance, if any.

12.6(47) An applicant must list the total project costs and eligible basis by credit type for the residential portion of a project. Based on this information, the eligible basis for the project shall be calculated along with the total adjusted eligible basis, the total qualified basis, the maximum allowable credit amount, the combined 30 percent and 70 percent of the present value of the credit and the total credit requested per unit. The qualified eligible basis must be determined on a building-by-building basis. Project costs include costs for:

1. Land and broker fees;
2. Existing structures;
3. On-site work;
4. Off-site work;
5. Demolition;
6. Relocation;
7. Other work around the site;
8. A new building;
9. Rehabilitation;
10. General requirements for rehabilitation and new construction;
11. Contractor overhead;
12. Contractor profit;
13. Other items for rehabilitation and new construction;
14. Architect fees;

15. Engineer fees;
16. Attorney fees;
17. Accountant fees;
18. Consultant fees;
19. Processing agent fees;
20. Other professional fees;
21. Construction insurance;
22. Construction interest;
23. Construction loan origination fees;
24. Construction loan credit enhancement;
25. Taxes during construction;
26. A permanent loan origination fee;
27. Permanent loan credit enhancement;
28. Title and recording fees;
29. Other financing fees and expenses;
30. Property appraisal;
31. Market study;
32. Environmental report;
33. Tax credit fees;
34. The organization of a partnership;
35. Bridge loan fees or expenses;
36. Tax opinion;
37. Developer overhead;
38. Developer fees;
39. Other items related to the developer fees;
40. The rent-up reserve;
41. The operation reserve.

12.6(48) Identify the sources of construction financing including the amount of funds and the term of the loan.

12.6(49) Identify the sources of permanent financing not including equity funds.

12.6(50) Identify all sources of funds for the project.

12.6(51) Identify all sources and amounts of funds that are financed directly or indirectly with federal, state or local government funds.

12.6(52) Indicate whether the applicant will exclude any below market federal loan from the eligible basis of the project building.

12.6(53) Indicate whether tax-exempt financing is used for the project and the percentage of tax-exempt financing used in comparison to the total cost of the project.

12.6(54) Indicate whether taxable bond financing is used and in what amount.

12.6(55) Indicate whether the project's permanent financing will have any type of credit enhancement and, if so, the type of enhancement.

12.6(56) Indicate whether the project has any existing subsidies provided by a federal, state, local or other source.

12.6(57) Indicate whether HUD approval is required for the transfer of any physical assets associated with the project.

12.6(58) Indicate whether a project investor will be providing equity funds for the project in exchange for tax credits. If so, provide information concerning any syndication or placement of interest in the owner entity and estimated proceeds to be received from such sale or placement as follows:

a. Amount of low-income tax credit proceeds;
b. Amount of historic tax credit proceeds;
c. Date the proceeds from the low-income tax credits and historic tax credits will be paid;
d. Whether the funds result from a public or private offering;

e. The type of investors; and

f. The name of the fund, the name, address and telephone number of the syndicator.

12.6(59) The authority shall provide space where an applicant can calculate a trial amount for the tax credit needed for a project. However, the authority shall calculate the actual amount of the credit needed for the proposed project. The trial amount calculated for the tax credit may differ from the amount calculated by the authority. The amount calculated by the authority shall be the amount relied upon by the authority.

12.6(60) The applicant shall make an irrevocable election to follow the minimum set-aside requirements established by IRC Section 42. The minimum set-aside elections shall include one or more of the following:

a. At least 20 percent of the rental residential units in the project are rent-restricted and are to be occupied by individuals whose income is 50 percent or less of area gross median income;

b. At least 40 percent of the rental residential units in the project are rent-restricted and are to be occupied by individuals whose income is 60 percent or less of area gross median income;

c. In addition to the minimum set-aside requirement contained in this rule, the project shall meet the deep rent skewing option defined in IRC Section 142(d)(4); that is, 15 percent of the units are occupied by individuals whose income is 40 percent or less of area gross median income and other requirements included therein.

12.6(61) Indicate whether any of the low-income units receive or have been approved to receive rental assistance at the time the application for low-income tax credits was filed with the authority. If so, an applicant must list the type of rental assistance received, the number of units receiving rental assistance, the number of years of the rental assistance contract, the details of the rent restrictions including the actual rent for one month, the actual utilities paid by the tenant for one month and the total rent and utilities paid by the tenant for one month.

12.6(62) Based upon an applicant's response to the minimum set-aside election, the applicant shall indicate the maximum monthly rent that may be charged per unit based upon 40 percent of the area gross median income for one unit for one month, 50 percent of the area gross median income for one unit for one month, and 60 percent of the area gross median income for one unit for one month, using the information attached to the application to calculate these amounts.

12.6(63) For the low-income units in a project, an applicant must estimate the monthly income for the low-income units. The estimate must include an estimate of the annual percentage increase in the annual income from the project.

12.6(64) For market rate units, an applicant must estimate the monthly income for the market rate units. The estimate must include an estimate of the annual percentage increase in the annual income from the project.

12.6(65) An applicant must calculate the amount of the monthly utilities for the units in a project and identify whether the tenant or the owner is paying the cost. An applicant must indicate the source of information for the calculation.

12.6(66) Identify administrative expenses including advertising, management fees, legal fees, partnership fees, accounting and audit fees and other expenses.

12.6(67) Identify maintenance costs including decorating, repair, exterminating, grounds expense and any other cost items identified and detailed as to amount.

12.6(68) Identify operating expenses including elevator maintenance, water and sewer, electric, gas, trash removal costs and payroll and related employment costs, including taxes, insurance costs and other costs related to operating expenses.

12.6(69) Identify real estate tax costs or special assessments or any other fee levied by a local or state governmental unit.

12.6(70) Identify the annual replacement reserve for the units in the project and provide an estimate for the annual percentage increase in annual expenses.

12.6(71) Identify the project schedule including site preparation, ownership completion, financing for construction, permanent loan, other loans and grants, plans and specifications, closing and transfer information, construction start date, completion of construction, the date the building is placed in service and the date lease is completed.

12.6(72) Identify the name of the local jurisdiction in which the project will be located and include the name and address of the chief executive officer of the political jurisdiction. See IRC Section 42(m)(1)(A)(ii). If this information is not provided, the authority shall not be able to notify the local jurisdiction that an application has been filed. An award of tax credits may be invalid if this notification is not accomplished.

12.6(73) An applicant must indicate that the project shall be subject to the standard extended use agreement which requires that the project be used for affordable housing for at least 30 years. Pursuant to IRC Section 42, in certain circumstances, such an extended use period may be terminated. The applicant must indicate that the project will be subject to the standard extended use agreement which permits early termination (after the mandatory 15-year compliance period) of the extended use period or that the project shall be subject to an extended use agreement in which the owner's rights to an early termination of the extended use provision are waived for additional years after the 15-year compliance period.

12.6(74) An applicant must indicate whether:

a. The project is located in a community that is experiencing a shortage of low-income housing;

b. The project combines the tax credit with financial assistance from the local community, or other state or federal sources;

c. The project is in an official neighborhood preservation or other organized community revitalization program.

The applicant shall attach documentation to support the items identified in this subrule including, but not limited to, a current market study, written commitments of community or state support including financial commitments, neighborhood preservation or revitalization plans or other supporting documents. The information must be current. Current information is information dated within the last five years from October 1, 1998. The information is intended to satisfy the requirements of IRC Section 42(m)(1)(C) which requires that the QAP include the following criteria: (1) project location; (2) housing needs characteristics; (3) project characteristics; (4) sponsor characteristics; (5) participation of local tax-exempt organizations; (6) tenant populations with special needs; and (7) public housing waiting lists. Compliance with this provision shall be scored as described in rule 12.9(16).

12.6(75) Include a list of previous projects on a form prescribed by the authority. The applicant must make a full disclosure regarding all previous projects and participation history as a principal in any rental housing project including, but not limited to, the name and address of all principals in the projects, the name, location, governmental agency and number of units in the project, the role, interest, and year when participation began and ended, the year the project was placed in service, and whether there have been any sales, foreclosures, defaults, instances of IRS noncompliance and issuance of IRS Form 8823.

12.6(76) An applicant must sign the taxpayer certification and attach it to the application.

12.6(77) An applicant must sign a certification of ownership, disclosure, prior experience, and release relating to all previous projects.

12.6(78) The following exhibits must be included with the application if applicable:

1. Site control documentation.
2. Documentation of zoning as described in rule 12.7(16).
3. Evidence of availability of utilities at the site as described in rule 12.7(16).
4. Evidence of a conditional or final financing commitment from all sources as described in rule 12.7(16).
5. Evidence of rental assistance contracts or public housing authority letter, if applicable.
6. A market study if the project contains more than 12 units. A market study is not required for a project with 12 or fewer units.

7. A sketch plan of the site including plans and specifications or work write-ups.

8. A legible site location map.

9. A copy of the recorded deed showing that the owner or the taxpayer or both hold the title to the site must be provided before a carryover agreement can be signed or an IRS Form 8609 can be issued, whichever is applicable in the year in which the project receives a reservation.

10. A copy of the letter from the Internal Revenue Service indicating the federal identification number for a partnership and a copy of the executed partnership agreement or other evidence indicating that the federal identification number has been applied for.

11. A copy of the letter from the Internal Revenue Service indicating the federal identification number for a corporation, or other evidence indicating that the federal identification number has been applied for, an executed copy of the articles file-stamped by the secretary of state and an executed copy of the bylaws of the corporation.

12. A copy of the letter from the Internal Revenue Service indicating the federal identification number for a limited liability company, or other evidence that the federal identification number has been applied for, an executed copy of articles of organization file-stamped by the secretary of state and a copy of the executed operating agreement for the limited liability company.

13. If the applicant is seeking a portion of the nonprofit set-aside, the nonprofit organization must include a copy of its articles of incorporation, articles of organization or partnership agreement and the determination letter of tax-exempt status from the Internal Revenue Service.

14. If the applicant has obtained a waiver for its building or buildings, a copy of the waiver must be included with the application. An allocation cannot be made until the waiver has been received.

15. A copy of the agreement or contract relating to syndication or placement of partnership interests.

16. A copy of any rental assistance contract, agreements or approvals from a public housing authority.

17. Documentation of the utility calculations. The most recent public housing assistance, HUD or rental development utility calculation chart must be used for the calculations.

18. A legal description of the site.

19. A 15-year after-tax cash flow of the project.

20. A 15-year total benefit approximation that includes the after-tax cash flow plus benefits of the requested tax credit showing the estimated percentage of return on the owner’s investment and limited partner’s investment.

21. An AIA construction contract or other contract detailing the estimated construction costs for the project.

22. A list of previous projects for an applicant or a general partner who has not had previous tax credit allocations in Iowa.

23. A résumé of each member of the development team for projects of five or more units.

24. Documents supporting housing needs characteristics.

25. If the project is designed to serve tenants with special housing needs, documentation supporting the previous experience of the development team with the type of housing or service delivery proposed.

26. Other documentation as identified in the application or these rules.

265—12.7(16) Threshold requirements—all applicants. To be considered for a reservation of tax credits, a project described in an application must first demonstrate that it meets all of the following basic requirements. Any application that fails to meet any one of these requirements shall be rejected and shall not be scored.

12.7(1) The applicant has certified in writing that the project as proposed will qualify as a qualified residential rental project that is consistent with the requirements of IRC Section 42. The certification must be attached to the application.

12.7(2) The applicant is ready to proceed. Readiness includes but is not limited to a showing of the following:

a. The applicant has site control. Adequate evidence of site control is accomplished through one of the following (one of these items must be attached to the application as an exhibit):

(1) A copy of a recorded warranty deed in the name of the ownership entity or entities which comprise the project owner;

(2) A contract for sale or lease (the minimum term of the lease must be at least 45 years) in the name of the ownership entity or entities which comprise the project owner. The contract for sale or the lease must be valid for the entire period of development that is under consideration for tax credits or at least 90 days, whichever is greater.

(3) A copy of an exclusive option or a binding agreement to purchase in the name of the ownership entity or entities which comprise the applicant. The option must be valid for the entire period the project is under consideration for tax credits or at least 90 days from the date of the filing of the application, whichever is greater.

b. The applicant shall provide evidence of current and appropriate zoning in the form of a letter from the appropriate municipal authority. Adequate evidence attached as an exhibit to the application of zoning approval includes but is not limited to:

(1) A current copy of a letter from the city or town where the project will be located indicating that appropriate zoning approvals for the project have been or will be granted by the time the project commences construction. A current copy of a letter shall be a letter dated within six months before or after October 1, 1998, or six months before or after October 7, 1999.

(2) A copy of a letter or other written evidence that documents that a zoning request has been filed with the appropriate zoning authority and indicates when the zoning authority is expected to act on the zoning request.

c. The project site must have utilities presently available at the site or the applicant must describe in writing the action necessary to bring utilities to the site. Adequate evidence showing the existence of utilities or the actions necessary to bring the utilities to the site includes, but is not limited to:

(1) A copy of a letter from the appropriate municipal provider or local provider, or

(2) A copy of the last monthly utility bill which must clearly identify the project by its full address.

Either of these documents must be attached to the application as an exhibit.

d. The applicant must supply documentation of housing needs of the community. Adequate evidence of housing needs is a market study. The market study must be attached to the application as an exhibit. For the 1999 cycle of tax credit awards, a market study is current if it was completed between October 2, 1997, and October 1, 1998. The market study is not required for projects with 12 or fewer units.

e. The applicant must file a complete and timely application which includes applications for other public funding sources.

f. The applicant must exhibit a willingness to enter into a land use restrictive covenant (LURA) for the project with the authority, as required by IRC Section 42(h)(6). Adequate evidence of willingness to enter into an extended use agreement is a copy of the agreement or a certification that the applicant shall execute an extended use agreement with the authority.

12.7(3) The applicant must demonstrate that the project is financially feasible and viable using the least amount of housing credit dollar. See IRC Section 42(m)(2) and Iowa Code section 16.52(2). Adequate evidence of financial feasibility and continuing viability must include a detailed description of the following:

a. The sources and uses of all funds and the total financing planned for the project;

b. Any proceeds or receipts expected to be generated by reason of local, state or federal tax benefits;

c. The percentage of the housing credit dollar amount used for project costs other than the costs of intermediaries; and *d.* The reasonableness of the development and operational costs of the project.

The authority shall use generally accepted underwriting criteria to assess the financial feasibility and continuing viability of a project. Based upon its own assessment as required by IRC Section 42 and the financial information submitted to support the project, the authority shall determine whether the applicant has requested the least amount of housing credit dollar necessary to ensure project feasibility.

12.7(4) An application shall be rejected outright for any of the following:

a. The authority determines that an applicant or any of its principals or affiliates who own at least 5 percent of the applicant or any of the officers or board members of the applicant have been convicted of, entered an agreement for immunity from prosecution, received a deferred conviction or sentence or suspended conviction, or pled guilty, including a plea of no contest, to a crime of dishonesty, fraud, tax fraud, embezzlement, bribery, payments of illegal gratuities, perjury, false statements, racketeering, blackmail, extortion, or falsification or destruction of records.

b. An applicant has been debarred from any program administered by the authority, any other state agency, or any federal agency.

c. An applicant has an identity of interest with any debarred entity.

d. An applicant includes developer fees and overhead and consultant fees that exceed 15 percent of the total eligible adjusted basis of the project in its application. The authority shall determine developer fees by subtracting the developer fees and overhead and consultant fees from the eligible basis before calculating the fees as a percentage of the adjusted eligible basis.

e. The application indicates that the contractor's profit exceeds 6 percent of the project costs.

f. The application indicates that the contractor's overhead exceeds 2 percent of the project costs.

g. The application indicates that the general requirements for a project exceed 6 percent of the project costs.

h. The application fails to disclose any direct or indirect financial or other interest a member of the project development team may have with another member of the project development team or with the project.

265—12.8(16) Threshold requirements for nonprofit applicants. To be considered for a reservation of tax credits, a project described in an application must first demonstrate that it meets all of the requirements of rule 12.7(16). In addition, nonprofit applicants must meet the requirements of rule 12.8(16). Any application that fails to meet any of the requirements of rule 12.7(16) or 12.8(16) shall not be scored and the application shall be rejected.

12.8(1) For applicants (project owners) seeking credits from the nonprofit set-aside, all of the following documents that confirm that the project owner is a qualified nonprofit organization pursuant to IRC Section 42(h)(5)(C) must be attached to the application:

a. An IRS determination letter which states that the qualified nonprofit organization is an IRC Section 501(c)(3) or (4) entity;

b. If the project involves a joint venture between a qualified nonprofit organization and a for-profit entity, an agreement which shows that the nonprofit organization controls the project (directly or indirectly) and shall materially participate (within the meaning of IRC Section 469(h)) in the development and operation of the project throughout the compliance period;

c. A current list of all directors and officers of the qualified nonprofit organization, including their names, addresses, and primary occupations. All directors and officers must disclose any relationship with an affiliate or otherwise with other members of the applicant or any members of an affiliate of the development team or any combination thereof; and

d. A copy of the articles of incorporation of the qualified nonprofit organization that specifically states that the fostering of affordable housing is one of the exempt purposes for the qualified nonprofit organization.

12.8(2) The applicant must show that the qualified nonprofit organization owns an interest in the project (directly or through a partnership) and must materially participate in the development and operation of the project throughout the compliance period. Adequate evidence of ownership includes but is not limited to a certified statement of ownership. Adequate evidence of material participation includes but is not limited to a description of the management and operational plan for the project demonstrating the material participation of the qualified nonprofit organization.

12.8(3) The authority reserves the right to conduct additional due diligence to determine whether or not an entity is a qualified nonprofit organization.

265—12.9(16) Selection criteria and scoring. The authority shall evaluate applications for tax credit allocations using the selection and point system described in this rule. Each subrule has either a specific point designation or a range of points an applicant may be awarded. Points shall be awarded based on the following selection criteria:

12.9(1) The project is located outside an MSA (5 points).

12.9(2) The project is located in a qualified census tract or a difficult development area and qualifies for up to a 30 percent increase in eligible basis, pursuant to IRC Section 42(d)(5)(C). A list of these areas is provided in the application package (5 points).

12.9(3) The sources of funding for the project combine the low-income housing tax credit with community-based financial assistance, such as tax abatements, tax increment financing, local CDBG or HOME funds, local housing trust funds, or other local financial assistance. A maximum total score of 15 points is possible for this item. Each source of local funding identified in the property budget in the application shall receive 5 points. In order to score in this category, the local funding contribution must be at least 3 percent of the total project costs.

12.9(4) The project includes the project owner's equity contribution in any amount. Adequate evidence of this item must be reflected in the application and evidenced by the identification of a commitment in the form of a letter specifying the amount and terms of the project owner's equity contribution (5 points).

12.9(5) The project utilizes conventional mortgage financing from a financial institution that is either domiciled in or has a branch office in Iowa as evidenced by a commitment letter from the local Iowa lending office of the financial institution (5 points).

12.9(6) The project must have local support. The project is supported by the local governmental entity as evidenced by a letter from a senior governmental entity official which states that the governmental entity supports or does not oppose the proposed project (5 points).

12.9(7) The project supports a specific neighborhood preservation or other organized community revitalization program as evidenced by a letter from a local government, housing authority, neighborhood-based nonprofit organization or other responsible party, which describes a specific plan for preservation or revitalization of the neighborhood (5 points).

12.9(8) The project utilizes only the amount of credit deemed necessary to reasonably meet the needs of low-income tenants likely to reside in the project, rather than the maximum amount of credit as required by IRC Section 42(m). The authority's analysis regarding this item shall compare the actual credit cost per unit in comparison with other proposed projects received for the current round of financing. A maximum of 15 points shall be awarded to this item on a sliding scale.

a. For projects that do not involve rehabilitation, the points shall be allocated as follows:

Credit Request Per Unit	Points
$4,900 or less	15
$4,901 to $6,000	10
$6,001 to $7,500	5
$7,501 to $10,000	3
Over $10,000	0

b. For projects involving rehabilitation of buildings, the points shall be allocated as follows:

Rehabilitation Cost Per Unit	Points
$30,000 or less	15
$30,001 to $60,000	10
$60,001 to $100,000	5
Over $100,000	0

12.9(9) The project preserves existing low-income housing as evidenced by one of the following items:

a. The project owner must show that the property in the project would be subject to foreclosure or default were no credit allowed, or is or shall be acquired from an insured depository institution in default or from a receiver or conservator of such institution. Adequate evidence of this item is a letter from the institution to which the project is in danger of being assigned (15 points); or

b. The project owner must show that the project owner is purchasing or has purchased a property owned by HUD or USDA, an insured depository institution in default, or a receiver or conservator of such an institution, or is an REO property. Adequate evidence of this item must be in the form of a binding contract to purchase from such federal or other entity as described in this rule, closing statements, or a copy of recorded warranty deed (15 points).

12.9(10) The project involves new construction in an area outside a metropolitan statistical area, or in a high-cost, difficult development or targeted area (15 points).

12.9(11) The project consists of "mixed-use" units; i.e., qualified tax credit and market rate units (5 points).

12.9(12) The project consists of 12 or fewer units (5 points).

12.9(13) A high percentage of the total costs of the project are allocated to actual construction costs as illustrated in the construction budget as opposed to the use of intermediary costs. The authority shall compare the construction costs per unit and award points on the following scale:

Construction Cost Per Unit	Points
$25,000 to $50,000	15
$50,001 to $80,000	10
$80,001 or higher	5

12.9(14) Local governmental or nonprofit organizations have evidenced support of the project and are committed to participating in supplying housing support services as evidenced by a letter of commitment to provide such services. The maximum number of points for this item is 10 points with 5 points awarded for each supportive service identified in the application package.

12.9(15) For an applicant of five or more units, the applicant has a successful track record as a developer or owner, or both, of completing and placing in service low-income housing in Iowa (10 points).

12.9(16) For an applicant of five or more units, the applicant has a successful track record as a developer or owner, or both, of providing housing under the LIHTC program as evidenced by having placed an LIHTC project in service prior to October 1, 1998 (5 points).

12.9(17) For an applicant with a management agent of five or more units, the applicant has signed a contract or a letter of intent with a management agent who has successful experience in the management of affordable housing, including LIHTC projects or other federally assisted projects, as evidenced by a copy of the contract or letter of intent and the résumé of the management agent (10 points).

12.9(18) The applicant has a construction contract for the project with a contractor who is domiciled in the state of Iowa. A copy of the construction contract detailing the estimated costs of construction must be provided with the application (10 points).

12.9(19) The applicant is providing housing support services for tenants. The applicant must provide written evidence that describes previous successful experience in addressing and delivering housing support services to tenants. The written evidence can be a summary of the applicant's experience, references, or other information the applicant deems supportive of this requirement. The applicant must also provide a written commitment to the authority indicating that the applicant shall provide appropriate services to meet these needs at the project. A total of 10 points is available for this category. A project shall receive 5 points for each service provided and a commitment to provide the service for the life of the project.

12.9(20) The applicant is a qualified Iowa nonprofit organization with previous successful experience in the development of housing similar to that proposed in the application. The project owner must provide a list of previous housing projects that the nonprofit organization has developed (10 points).

12.9(21) For housing projects for older persons only, the project must not contain any units with three or more bedrooms (5 points).

12.9(22) At least 10 percent of the units in the project have three or more bedrooms and are suitable for occupancy by families with children (5 points).

12.9(23) At least 10 percent of the units in the project are specifically designed for persons with disabilities (5 points).

12.9(24) The project is designed for transitional housing for the homeless as described in IRC Section 42 (5 points).

12.9(25) The project shall provide housing for persons on waiting lists for public housing. An applicant must submit a letter from the applicable public housing authority addressed to the project owner describing the public housing waiting list. The letter must indicate the number of persons on the list (5 points).

12.9(26) The project shall serve tenants with maximum household incomes lower than the AGMI requirements of IRC Section 42(g). The authority shall examine the elections made by the applicant in the application and the rents charged by the applicant to score this category. The rents shall be compared to the market rents included in the application as an exhibit to determine the percentage of market rate rents the applicant is charging. A maximum of 20 points shall be awarded for this item. A mixed-use project shall receive a percentage of the point total for this category based upon the percentage of low-income units included in the project. The following scale shall be used to award points:

<table>
<tr><th>Percentage of units at below market rates</th><th>Percentage of AGMI</th><th>Points</th></tr>
<tr><td>20</td><td>50</td><td>0[1]</td></tr>
<tr><td>40</td><td>60</td><td>0[1]</td></tr>
<tr><td>20</td><td>50</td><td rowspan="2">11[2]</td></tr>
<tr><td>80</td><td>60</td></tr>
<tr><td>40</td><td>50</td><td rowspan="2">11[2]</td></tr>
<tr><td>60</td><td>60</td></tr>
<tr><td>100</td><td>50</td><td>15</td></tr>
<tr><td>100</td><td>60</td><td>10</td></tr>
<tr><td>100</td><td>40</td><td>20</td></tr>
</table>

[1]This is a minimum requirement for federal law.

[2]This distribution of units and income amounts is required to qualify for HOME funds.

Additional points shall be awarded for deep rent skewing. If 15 percent of the units are occupied by individuals whose income is 40 percent or less of AGMI, a project shall be awarded 2 extra points. For example, a project that is proposing to build 35 units with HOME funds, and elects to rent 20 percent of the units to individuals with 50 percent AGMI and 65 percent of the units to individuals with 60 percent of AGMI and 15 percent of the units to persons with 40 percent of AGMI, the applicant is awarded 11 points for the 20 percent at 50 percent combination, 0 points for the minimum combination of 65 percent at 60 percent and 2 points for the deep rent skewing combination of 15 percent at 40 percent.

If an applicant proposes a project with market units and below market units, the total points available shall be multiplied by the percentage of the project dedicated to below market rates to obtain the rounded score for this category. For example, if a project has 75 percent of its units dedicated at below market rates and applied for HOME funds and the 20 percent at 50 percent and 80 percent at 60 percent combination is applied, the total rounded score would be 8 (75% $\times$ 11 = 8.25 or 8 rounded).

12.9(27) The project shall be obligated to serve qualified tenants for additional years beyond the minimum 15-year compliance period required by IRC Section 42(m)(1)(B)(i)(I) and 42(m)(1)(B)(ii)(I) and (II). A maximum of 35 points is possible for this item. Each additional year of compliance beyond the minimum 15-year requirement shall receive one additional point.

265—12.10(16) Other considerations to award tax credit reservations.

12.10(1) When the authority considers awarding tax credit reservations, at a minimum, it shall review during its public meeting, the relative scoring for each project, the sources and uses of funds, the location of the project and whether the applicant is a nonprofit owner or a for-profit owner. In addition and irrespective of scoring including a tie in the scoring, the authority may determine that a project shall not be funded for any of the reasons identified in this rule. In the event the authority elects not to award tax credits to a project for the reasons identified herein, the reasons must be clearly identified during the public meeting where the authority considers applications for tax credits.

a. The project does not further the stated purposes and objectives of the low-income housing tax credit program as described in rule 12.2(16).

b. The project is in a market that is saturated with low-income housing projects. The authority may rely on data gathered by the staff regarding the current number of low-income units in a specific part of the state, public housing waiting lists, vacancy rates or other information gathered regarding the concentration of projects and low-income persons.

c. The project is not preferred by other state or federal governmental units or political subdivisions with an interest in housing. The authority may consider the recommendations of the HART team where relevant or any other comments received from other state or federal agencies regarding a proposed project. The authority may consider whether funding commitments made by other governmental units have been received by a project.

d. The applicant has a history of noncompliance with IRC Section 42 and the Treasury regulations implementing IRC Section 42.

e. The applicant has failed to complete and place in service a previous allocation.

f. The project is in a county that has more than one project proposed for the county. The authority may consider the number of projects proposed for a certain county and decide to limit the number of projects on a local political subdivision basis, county basis or regional basis.

g. The project is one of several proposed by a single applicant. The authority may consider the number of projects an applicant is awarded during any one cycle and limit the total amount of credits or projects awarded for any annual ceiling cap.

12.10(2) In the event that projects remain tied after the board has considered the items contained in subrule 12.10(1), the board may award credits to a project on the following grounds in the following order:

a. The project serves the lowest-income tenants based on the weighted average of the percentage of the AGMI of the tenants served by the project.

b. The project serves low-income tenants for the longest period of time.

c. The project is located in a county that has not received a tax credit project in the last five years.

d. In the event a tie remains after all of the items in 12.10(1) and 12.10(2)*"a"* to *"c"* have been considered by the board, the board may in its discretion choose a project for the award of tax credits.

265—12.11(16) Notice of the tax credit award. Once the authority has reserved credits, a written notice of reservation shall be faxed and mailed to all approved applicants. The unsuccessful applicants shall be notified by fax and by mail that the authority did not select their projects and provide a brief explanation as to why the authority did not select the applicant's project. All notices shall be sent on the same day the awards are made. The board may establish a waiting list for unsuccessful projects. An applicant placed on the waiting list shall be required to reapply for tax credits if the applicant seeks funding in the next round of tax credit awards. Placement on the waiting list does not imply either directly or indirectly that the board will forward fund the applicant's project. The waiting list shall be based on financial feasibility, relative scoring, developer concentration, geographic distribution, or any of the remaining criteria described in rule 12.10(16). The board in its discretion may adjust the order on the waiting list for any reason, including but not limited to the result of a contested case proceeding.

265—12.12(16) Postreservation requirements.

12.12(1) An applicant may amend its application after an award of tax credits is made solely for the purpose of showing changes in the following:

a. Sources and uses of funds that do not change the amount of tax credits awarded or change the nature of the project; or

b. Changes in partnership members, shareholders, or limited liability members.

12.12(2) Each applicant receiving a reservation of credit is required to execute and record a declaration of land use restrictive covenants. The original recorded document must be recorded before an IRS Form 8609 shall be issued or a carryover agreement executed, whichever form of allocation is applicable.

12.12(3) All applicants receiving a carryover allocation must submit a carryover agreement and allocation and taxpayer's election statement and a certified public accountant's (CPA) cost certification evidencing that the taxpayer has accumulated at least 10 percent of its reasonably expected basis. In addition, all applicants receiving an IRS Form 8609 allocation must submit an IRS Form 8609 request package in its entirety, which includes a CPA cost certification evidencing final project costs, and pay the compliance monitoring fee before the IRS Form 8609 shall be issued. In addition to the carryover agreement, a tax credit reservation recipient shall provide the information and documents described in this subrule. The authority shall not execute a carryover agreement or issue an IRS Form 8609 until it has received these documents:

a. If the tax credit reservation recipient is a partnership, the partnership shall submit a copy of the letter from the Internal Revenue Service indicating the federal identification number for a partnership and a copy of the executed partnership agreement.

b. If a tax credit reservation recipient is a corporation, a copy of the letter from the Internal Revenue Service indicating the federal identification number for a corporation, an executed copy of the article of incorporation file-stamped by the secretary of state and an executed copy of the corporation's bylaws.

c. If a tax credit reservation recipient is a limited liability company, a copy of the letter from the Internal Revenue Service indicating the federal identification number for the company and an executed copy of the articles of organization file-stamped by the secretary of state and a copy of the executed operating agreement for the company.

12.12(4) If the applicant is a partnership or a limited partnership, the authority shall reserve tax credits to a partnership and the general partners. Reservations are not transferable. In the event there is a change in a general partner after an allocation of credits has been made, the authority shall be notified by the partnership to obtain approval of the change. The new general partner shall meet the requirements described in these rules before the authority shall consent to the change. If the requirements outlined in these rules are not met, the request for transfer shall not be approved.

12.12(5) If the applicant is a corporation, the authority shall reserve tax credits to a corporation. Reservations are not transferable. In the event there is a change in the majority shareholder after an allocation of credits has been made, the authority shall be notified by the corporation to obtain approval of the change. The new majority shareholder shall meet the requirements described in these rules before the authority shall consent to the change. If the requirements outlined in these rules are not met, the request for transfer shall not be approved.

12.12(6) If the applicant is a limited liability company, the authority shall reserve tax credits to the limited liability company. Reservations are not transferable. In the event there is a change in the majority membership after an allocation of credits has been made, the authority shall be notified by the limited liability company to obtain approval of the change. The new member(s) shall meet the requirements described in these rules before the authority shall consent to the change. If the requirements outlined in these rules are not met, the request for transfer shall not be approved.

265—12.13(16,17A) Applicant appeals. An applicant whose application has been timely filed, who is aggrieved by the award of the authority and desires to challenge the award shall appeal the decision by filing a written notice of appeal within seven days of the denial of an award before the Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. Filing a notice of appeal shall not stay the tax credit reservation awards made by the authority. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. A written notice of appeal may also be filed by fax transmission at (515)242-4957 within seven days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal shall state the grounds upon which the applicant challenges the authority's award. In order to prevent the award of credits by the authority, an aggrieved party shall request a stay of the authority's decision in conformance with rule 265—7.29(17A). In the event a request for stay is made, the request for stay will be heard before the contested case.

12.13(1) *Procedures for applicant appeal.* The aggrieved applicant shall file a contested case and follow the procedures set out in this rule.

12.13(2) *Hearing.* Upon receipt of a notice of an applicant appeal, the authority may contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved applicant or applicants. The authority shall select a presiding officer and hold a hearing on the applicant appeal in conformance with its rules on contested cases within 30 days of the date the notice of appeal was received by the authority.

12.13(3) *Discovery.* Any discovery requests shall be served simultaneously on the parties within 15 days of the notice of appeal.

12.13(4) *Witnesses and exhibits.* Within 15 days following the notice of appeal, the parties shall contact each other regarding witnesses and exhibits. There is no requirement for witness and exhibit lists. However, the parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials. The parties may request a prehearing conference to discuss witnesses, exhibits or other matters relating to the hearing.

12.13(5) *Settlements.*

a. A contested case may be resolved by informal settlement. Settlement negotiations may be initiated at any stage of a contested case by the executive director, prosecuting attorney, or the aggrieved party. No party is required to participate in the informal settlement process.

b. The executive director shall have authority to negotiate on behalf of the board. No party shall communicate with any board member about settlement negotiations until a written proposed settlement is submitted to the full board for approval, unless all parties to the settlement negotiations waive this prohibition. No proposed settlement shall be presented to the full board for approval until it is in final, written form signed by the aggrieved party.

c. All proposed settlements are subject to approval of a majority of the full board. If the board fails to approve a proposed settlement, it shall be of no force or effect to either party and shall not be admitted into evidence during the hearing on the contested case. If the board approves a proposed settlement, it shall become binding when it is signed by both the chairperson or the chairperson's designee and the aggrieved party.

d. A board member who participates in settlement negotiations at the request of the parties pursuant to paragraph 12.13(5)*"b"* or is presented with a settlement proposal pursuant to paragraph 12.13(5)*"c"* that is rejected by the board shall not be disqualified from adjudicating the contested case due to that participation.

12.13(6) *Evidence for a telephone or network hearing.* If the hearing is conducted by telephone or on the fiberoptic network, all exhibits must be delivered to the office of the authority three days prior to the time the hearing is conducted. Any exhibits which have not been served on the opposing party should be served at least seven days prior to the hearing.

12.13(7) *Remedies.* In the event an applicant is successful in demonstrating that the applicant should have been awarded tax credits, the board may place the project on a waiting list for unreserved or returned credits.

12.13(8) *Contents of decision.* The presiding officer shall issue a decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform with Iowa Code chapter 17A. The decision shall be sent to all parties by first-class mail.

12.13(9) *Record requirements.* The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). The record shall also include any request for a contested case hearing and other relevant procedural documents regardless of their form.

a. Oral proceedings in connection with an applicant appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by a certified shorthand reporter shall bear the costs of the reporter.

b. Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. Copies of tapes of oral proceedings may be obtained from the board at the requester's expense.

d. The recording or stenographic notes of oral proceedings or the transcription shall be filed and maintained by the board for at least two years from the date of the proposed decision.

12.13(10) *Dismissal.* A ruling dismissing all of a party's claims or a voluntary dismissal is a decision under Iowa Code section 17A.15.

12.13(11) *Requests for rehearing.* Requests for rehearing shall be made to the authority within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision fails to include adequate findings or conclusions on all issues. A request for rehearing is not necessary to exhaust administrative remedies.

12.13(12) *Judicial review.* Judicial review of the authority's final decisions may be sought in accordance with Iowa Code section 17A.19.

265—12.14(16) Monitoring procedures and record-keeping requirements.

12.14(1) The authority is required to establish procedures for monitoring compliance with the provisions of IRC Section 42 and for notifying the Internal Revenue Service of any noncompliance of which it becomes aware. In order to satisfy its monitoring and reporting obligations, the authority shall require each owner of a low-income housing project to comply with the requirements described in this rule.

12.14(2) For each year in the compliance period, the owner of a low-income housing project shall keep records for each qualified low-income building in the project that show the following:

a. The total number of residential rental units in the building including the number of bedrooms and the size in square feet of each residential rental unit;

b. The percentage of residential rental units in the building that are low-income units;

c. The rent charged on each residential rental unit in the building including any utility allowance;

d. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under IRC Section 42(g)(2) (as in effect before the amendments made by the Revenue Reconciliation Act of 1989);

e. The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented;

f. The annual income certification of each low-income tenant per unit;

g. Documentation to support each low-income tenant's income certification (e.g., a copy of the tenant's federal income tax return, Form W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income shall be calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), and not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this rule is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under IRC Section 42(g);

h. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

i. The character and use of the nonresidential portion of the building included in the building's eligible basis under IRC Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

12.14(3) The owner of a low-income housing tax credit project shall retain the records described in subrule 12.14(2) for each building in the project for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the initial taxable year must be retained for at least six years after the due date for filing the federal income tax return for the last year of the compliance period of the building.

12.14(4) The owner of a low-income housing project shall certify at least annually to the authority that, for the preceding 12-month period:

a. The project met the requirements of:

(1) The 20-50 test under IRC Section 42(g)(1)(A) or the 40-60 test under IRC Section 42(g)(1)(B), whichever minimum set-aside test is applicable to the project, and

(2) If applicable to the project, the 15-40 test under IRC Sections 42(g)(4) and 142(d)(4)(B) for deep rent skewed projects;

b. There was no change in the applicable fraction (as defined in IRC Section 42(c)(1)(B)) of any building in the project, or that there was a change and a description of such change;

c. The owner has received an annual income certification from each low-income tenant and documentation to support that certification or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority as described at 12.14(4)*"g"* shall satisfy the income verification requirement;

d. Each low-income unit in the project was rent-restricted under IRC Section 42(g)(2);

e. All units in the project were for use by the general public and used on a nontransient basis (except for transitional housing for the homeless provided under IRC Section 42(i)(3)(B)(iii));

f. Each building in the project was suitable for occupancy, taking into account local health, safety and building codes;

g. There was no change in the eligible basis (as defined in IRC Section 42(d)) of any building in the project, or if there was a change, the nature of the change;

h. All tenant facilities included in the eligible basis under IRC Section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants in the building;

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

j. If the income of tenants of a low-income unit in the project increased above the limit allowed in IRC Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

k. An extended affordable housing commitment as described in IRC Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989).

12.14(5) Review.

a. The authority shall review the certifications submitted under subrule 12.14(4) for compliance with the requirements of IRC Section 42.

b. The owners of all low-income housing projects shall submit to the authority each year general information on tenant income and rent for each low-income unit in the form and manner designated by the authority. Additionally, each year the authority shall select at least 20 percent of the tenants in at least 20 percent of the projects for whom the owners shall submit to the authority for compliance review a copy of the annual income certification, the documentation the owner has received to support that certification, and the rent records.

c. The authority may also inspect a reasonable number of projects each year, review on site the low-income tenant income certifications for that year, the documentation the owner has received to support those certifications, and the rent records for the project.

d. The authority shall determine which records are to be inspected or submitted by the owner for review. The records to be inspected pursuant to 12.14(5)*"c"* shall be chosen in a manner that shall not give owners of low-income housing tax credit projects advance notice that their records for a particular year are subject to inspection. However, the authority may give an owner reasonable notice that an inspection may occur so that the owner may assemble records.

12.14(6) The certifications and review of certifications described in subrules 12.14(4) and 12.14(5) shall be made at least annually covering each year of the 15-year compliance period under IRC Section 42(i)(1). The certifications shall be made under penalty of perjury. The authority may require that certifications and reviews be made more frequently, provided that all months within each 12-month period are subject to certification.

12.14(7) Exceptions for certain buildings.

a. If the authority has met the requirements of 12.14(7)*"b,"* owners are not required to submit, and the authority is not required to review, the tenant income certification, supporting documentation, and rent records for:

(1) Buildings financed by the USDA under the Section 515 program, or

(2) Buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with tax-exempt bonds.

b. The authority shall enter into an agreement with USDA or the tax-exempt bond issuer pursuant to which USDA or the tax-exempt bond issuer agrees to provide information to the authority concerning the income and rent of the tenants in the building. The authority may assume the accuracy of the information provided by USDA or the tax-exempt bond issuer without verification. The authority shall review the information and determine that the income limitation and rent restriction of IRC Section 42(g)(1) and (2) are met. However, if the information provided by the USDA or tax-exempt bond issuer is not sufficient for the authority to make this determination, the authority shall request the necessary additional income or rent information from the owner of the buildings.

12.14(8) Inspection provisions. The authority shall have the right to perform an on-site inspection of any project at least through the end of the compliance period of the buildings in the project. The inspection provision of this rule is separate from any review of low-income certifications, supporting documentation and rent records under subrule 12.14(5). The authority will provide 48 hours' advance notice to the project owner to inspect any individual units in a project. Otherwise, advance notice to the owner is not necessary for purposes of the inspection provisions set forth in this rule.

12.14(9) Notification of noncompliance provisions. The authority is required to give the notice described in subrule 12.14(10) to the owner of a low-income housing project and the notice described in subrule 12.14(11) to the Internal Revenue Service.

12.14(10) Notice to owner. The authority shall provide prompt written notice to the owner of a low-income housing project if the authority does not receive the certification described in subrule 12.14(4) or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in subrule 12.14(5), or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of IRC Section 42.

12.14(11) Notice to Internal Revenue Service. The authority is required to file IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, with the Internal Revenue Service no later than 45 days after the end of the correction period (as described in subrule 12.14(13)), including extensions permitted under subrule 12.14(13), and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The authority must explain on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under subrule 12.14(4) that results in a decrease in the qualified basis of the project under IRC Section 42(c)(1)(A) is noncompliance that must be reported to the Internal Revenue Service under subrule 12.14(9). If the authority reports on IRS Form 8823 that a building is entirely out of compliance and shall not be in compliance at any time in the future, the authority need not file IRS Form 8823 in subsequent years to report that building's noncompliance.

12.14(12) Authority retention of records. The authority shall retain records of noncompliance or failure to certify for six years beyond the authority's filing of the respective IRS Form 8823. In all other cases, the authority must retain the certifications and records described in this subrule for three years from the end of the calendar year in which the authority receives the certification and records.

12.14(13) Correction period. The correction period shall be a period not exceeding 90 days from the date of the notice to the owner described in subrule 12.14(10), during which the owner must supply any missing certifications and bring the project into compliance with the provisions of IRC Section 42. The authority may extend the correction period for up to six months, but only if the authority determines there is good cause for granting the extension.

12.14(14) Delegation of monitoring. The authority may retain an agent or other private contractor (the "authorized delegate") to perform compliance monitoring. The authorized delegate must be unrelated to the owner of any building that the authorized delegate monitors. The authorized delegate may be delegated all of the functions of the authority to monitor compliance, except for the responsibility of notifying the Internal Revenue Service under subrule 12.14(11). The authorized delegate must notify the authority of any noncompliance or failure to certify.

12.14(15) Limitations. The authority shall use reasonable diligence to ensure that any authorized delegate to whom compliance monitoring is delegated properly perform the delegated monitoring functions. Delegation of compliance monitoring functions by the authority to an authorized delegate does not relieve the authority of its obligation to notify the Internal Revenue Service of any noncompliance of which the authority becomes aware.

12.14(16) Liability. Compliance with the requirements of IRC Section 42 is the responsibility of the owner of the building for which the credit is allowable. The authority's obligation to monitor for compliance with the requirements of IRC Section 42 shall not make the authority liable for an owner's noncompliance.

12.14(17) Effective date. These procedures for monitoring for noncompliance became effective on January 1, 1992, were amended on February 3, 1993, and apply to buildings placed in service for which a low-income housing tax credit is, or has been, allowable at any time. Notwithstanding the effective date, if the authority becomes aware of noncompliance that occurred prior to January 1, 1992, it is required to notify the Internal Revenue Service of that noncompliance.

265—12.15(16) Tax-exempt bond financed projects. Pursuant to IRC Section 42(m)(2)(D), projects which do not receive an allocation from the state housing credit ceiling because they qualify pursuant to IRC Section 42(h)(4) and are financed with tax-exempt bond obligations issued after December 31, 1998, must satisfy the requirements for allocation of a housing dollar amount under the qualified allocation plan and these rules. These projects shall be subject to the threshold requirements and evaluation procedures of the qualified allocation plan as described in these rules. However, tax-exempt bond financed projects shall not participate in the competitive funding rounds. A project that qualifies for an allocation of tax credit pursuant to IRC Section 42(h)(4) shall be eligible only for an allocation at the 4 percent present value credit level.

These rules are intended to implement Iowa Code section 16.52.

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