



**STATE OF DELAWARE**

**2016 LOW INCOME HOUSING TAX CREDITS**

# **QUALIFIED ALLOCATION PLAN**

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Delaware State Housing Authority  
18 The Green  
Dover, De 19901  
[www.destatehousing.com](http://www.destatehousing.com)

Jack Markell, Governor

Anas Ben Addi, Director

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## **LOW INCOME HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN**

### **Introduction**

The Federal Low Income Housing Tax Credit program was established by Section 252 of the Tax Reform Act of 1986 and was codified as Section 42 of the Internal Revenue Code of 1986 as amended (IRC). The Revenue Reconciliation Act of 1989 amended IRC Section 42 by adding Section 42(m) that requires allocating agencies to allocate low-income housing tax credits pursuant to a Qualified Allocation Plan (QAP). The Delaware State Housing Authority (DSHA) is the allocating agency for the State of Delaware. The following Qualified Allocation Plan represents the standards and procedures used by DSHA to perform its allocation and monitoring responsibilities.

Section 42(m) of the IRC states:

For purposes of this paragraph, the term “Qualified Allocation Plan” means any plan:

- i) Which sets forth selection criteria to be used to determine housing priorities of the housing credit agency that is appropriate to local conditions.
- ii) Which also gives preference in allocating housing credit dollar amounts among selected projects to:
  - a) Projects serving the lowest income tenants
  - b) Projects obligated to serve qualified tenants for the longest periods, and
  - c) Projects, which are, located in qualified census tracts...and the development of which contributes to a concerted community revitalization plan.
- iii) Which provides a procedure that the Agency (or an agent or other private contractor of such agency) will follow in monitoring for non-compliance with the provisions of this section and in notifying the Internal Revenue Service of noncompliance with the provisions of this section which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

Certain Selection Criteria must be used: The selection criteria set forth in a qualified allocation plan must include:

- a) Project location
- b) Housing needs characteristics
- c) Project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan
- d) Sponsor characteristics
- e) Tenant populations with special needs housing
- f) Public housing waiting lists
- g) Tenant populations of individuals with children
- h) Projects intended for eventual tenant ownership

- i) Energy efficiency
- j) Preserving historic character

The Low Income Housing Tax Credit (LIHTC) may be claimed annually for ten (10) years by owners of, or investors in, qualified low-income rental housing. The maximum amount of annual Credit is based on the cost of development, the number of qualified low-income units, the Credit percentage rate, and the amount needed to make the development viable. The annual Credit amount is determined at the time of final allocation and remains constant for the entire ten-year period. Cost of development is defined generally as the depreciable basis of the property. This includes "soft" costs such as engineering studies, architectural specifications, fees connected with construction financing, relocation expenses, construction period interest, performance bonds and general contractor fees as determined by the cost certification and certified by applicant's certified public accountant in accordance with Section 42. Land is not a depreciable item under Section 42 and therefore the cost of land acquisition or imputed value of the land is excluded from the cost of development. Other non-depreciable items include escrows, reserves, marketing expenses, and permanent loan fees.

Eligible developments include new construction, substantial rehabilitation and acquisition, if substantial rehabilitation is being done. Maximum credit percentages for qualifying costs in an eligible development are calculated monthly based on the applicable rate issued by the Treasury Department. The intent of the federal government is that the present value of the Credit shall be 70% of qualified new construction and substantial rehabilitation costs that are not federally subsidized, while the present value of the Credit for Acquisition costs or costs that are financed from federal funds at a below market interest rate shall be 30%. Eligible developments include new construction, substantial rehabilitation and acquisition, if substantial rehabilitation is being done. The Credit Applicable Percentage for the 70% basis calculation for new and rehabilitation developments has been approved by Congress as a permanent rate of 9%.

DSHA will underwrite and allocate acquisition credits based on the applicable rate issued by the Treasury Department one (1) month prior to application submission and will utilize an equity factor dictated by market conditions. The equity factor will be listed in the application.

The following summarizes eligible development categories and indicates maximum annual credit percentage rates:

**Maximum Annual Credit  
Percentage Rate/Present  
Value**

**New construction or substantial rehabilitation of existing housing**

Credit is based on qualified development costs excluding land, acquisition costs and other non-depreciable costs as defined under Section 42 of the IRC. Qualified expenditures for substantial rehabilitation must be the greater of \$6,700 of qualified basis per low-income unit or 20% of unadjusted basis. DSHA has further defined substantial rehabilitation in the definition section of the QAP, and DSHA reserves the right to further adjust the minimum substantial rehabilitation requirement.

9% credit value

**NOTE:** Pursuant to IRC Section 42(d)(5)(c), in the case of any building located in a qualified census tract or difficult development area, the eligible basis of such building shall be 130% of such basis.

**New construction or substantial rehabilitation of existing housing receiving a federal subsidy (grant)**

30% present value

Any development receiving a tax-exempt obligation or a federally funded grant is limited to receiving 30% present value tax credits.

**Acquisition cost of existing housing**

Basis of Credit is on the cost of acquisition minus land value. The 30% present value Credit for acquisition of an existing building can only be claimed if at least minimum required substantial rehabilitation (greater of \$6,700 per low-income unit or 20% of unadjusted basis) is being done at the same time. DSHA has further defined substantial rehabilitation in the definition section of this QAP, and DSHA reserves the right to further adjust the minimum substantial rehabilitation requirement.

30% present value

Developments are eligible for 30% present value Credit only if the date of acquisition is 10 years or more after the later of the date the building was last placed in service or the date of the most recent nonqualified substantial improvements were made. However, acquisition credits may be obtained in less than 10 years after the later of the date the building was last placed in service or the date of the most recent nonqualified substantial improvements were made for properties receiving federal subsidy such as HUD Section 8, Section 221(d) 3, Section (d) 4, Section 236 & USDA Section 515 or any other housing program administered by HUD or the Rural Housing Service of the Department of Agriculture.

If a development fails to meet the minimum eligibility requirements at any time during the compliance period, the "accelerated" Credit amount, plus interest, may be subject to recapture by the IRS. The federal government considers the Credit a 15-year benefit accelerated to ten (10) years. Therefore, the accelerated Credit amount is the difference between the aggregate amount of Credit claimed and the aggregate amount of Credit that would have been available if the Credit was spread over the entire 15-year period.

The Housing Credit recapture bond rule has relaxed the rule on future and past dispositions if (a) it is reasonably expected the building will continue to be operated as a qualified low-income building; (b) the taxpayer elects to be subject to the new longer statute of limitations. The recapture provisions are not applied solely because there was a disposition of the low-income building (or interest therein) if it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remaining compliance period for the building. Owners will remain subject to recapture should there be any reduction in qualified basis resulting in recapture after the disposition. Low-income buildings financed with tax-exempt bond financing may be treated differently and owners should receive separate legal interpretations for these type projects.

The Low Income Housing Tax Credit Program is complex and evolving. For example, changes in the program adopted by Congress over the life of the program require careful review by persons who have extensive experience and expertise with this program and its requirements. The explanation contained in this QAP is qualified in its entirety, as it is only a summary of the LIHTC program and should not in any way be relied upon as legal advice. To that end, it is strongly recommended that project sponsors interested in applying for a Tax Credit allocation contact their tax accountant and attorney to review this program, the Internal Revenue Code (IRC) and IRS Regulations, IRS rulings, IRS guidance and any other pertinent information before pursuing the program.

As rules and regulations continue to be issued by the U.S. Department of Treasury for all facets of the Low Income Housing Tax Credit Program, Tax Credit preliminary reservations and allocations will be made by DSHA based on existing regulations. Any changes of rules and requirements must be met by the owner/investor(s) in order for them to continue receiving the Tax Credit. Regulations, rulings, Revenue Procedures and Technical Advice Memoranda (TAMs) are regularly issued by the IRS. It is the sponsor's obligation to understand and comply with the rules.

DSHA reserves the right to award a state basis boost in eligible basis of up to thirty percent (30%), as determined by DSHA, for the highest ranked property(ies) to preservation applicants, applicants that target special needs populations, and/or make projects financially feasible. This additional boost is not available for properties that are in a Qualified Census Tract (QCT) or Difficult to Develop Area (DDA) since a QCT or DDA already qualifies for the additional 30% boost and is not available to tax exempt bond applicants. No applications will be accepted with a state basis boost included in the tax credit calculation. DSHA will determine during the ranking/underwriting process if a state basis boost is needed for financial feasibility.

DSHA encourages all applicants to promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income residents or in areas containing a high proportion of affordable rental units and build communities of opportunities for newly created (conversion or new construction) projects. DSHA also encourages all applicants to consider building in communities with minimal affordable rental units relative to their housing needs for newly created affordable housing projects.

Failure of a project to fulfill all representations made in its application may result in a delay and/or non-issuance of the IRS Form 8609. At its sole discretion, DSHA may impose penalties for failure to comply with eligibility or point requirements, such penalties to include, but will not be limited to: a reduction in the allocated credit amount, the unilateral cancellation of an allocation, or penalty points which will be carried forward to applicant's subsequent DSHA LIHTC application.



## DESCRIPTION OF HOUSING NEEDS AND PRIORITIES

### Housing Needs and Priorities

In September 2014, the *Delaware Housing Needs Assessment 2015-2020* was released. The study, prepared by GCR Incorporated and The Reinvestment Fund (TRF) for the Delaware State Housing Authority, identifies and quantifies housing needs of existing households in Delaware and projected housing demand for 2015-2020, as well as national trends in housing policy. The full report and associated documents are available at: <http://destatehousing.com/FormsAndInformation/needs.php>. An online reporting portal was also developed for the project and is available at [http://demo.gis.gcr1.com/Delaware\\_GIS/](http://demo.gis.gcr1.com/Delaware_GIS/). The report evaluates needs at the submarket level, providing demand projections and demographic and housing needs analysis for six submarkets in the State's three counties.

Priority needs identified in the *Needs Assessment* and reflected in this Qualified Allocation Plan include:

- Creation of new affordable rental housing, especially for families and especially in areas of opportunity for low-income households;
- Preservation of the State's existing affordable housing properties, especially federally-subsidized properties and sites in poor physical condition; and
- Integrated, affordable units for people with disabilities and extremely low incomes, and other special populations that may need supportive services and rental assistance to live independently.

### Preservation of existing assisted affordable housing

As of 2014, Delaware's inventory of assisted multifamily rental housing includes approximately 11,500 units. This inventory includes approximately 4,000 LIHTC only units, approximately 2,700 LIHTC and Project-based subsidized housing, approximately 4,000 other subsidized housing projects, 600 other rent restricted housing, and approximately 250 market rate housing units. Many sites have never had a major rehabilitation. Preservation needs include:

- Older sites in need of extensive rehabilitation or potentially demolition and redevelopment. Many of these sites have federal rental assistance contracts that provide critical and essentially irreplaceable rent subsidies. In city and town centers, rehabilitation/redevelopment of these sites can be a critical component of neighborhood revitalization.
- Newer (but still past Year 15) LIHTC sites in moderate to good condition where affordability may be at risk. These sites often need some rehabilitation and financial restructuring to preserve affordability. In high-value markets, this existing affordable rental housing is especially critical to preserve.
- Aged public housing in need of moderate to complete rehabilitation. Financing for these sites may be similarly complex, but preserves federal rental assistance and may rehabilitate sites where redevelopment is a critical part of neighborhood revitalization.

## Needs of People with Disabilities and Special Populations

People with disabilities, particularly severe disabilities, are far more likely to have poverty-level income and lower income in general than people with no disabilities. In Delaware, 39% of people with disabilities have income below 200% of the federal poverty level compared to 25% of people with no disabilities. People with the most severe, work-limiting disabilities may rely on SSI or SSDI for income, which typically provides a very limited income that makes it near-impossible to afford housing without assistance. The lack of stable, affordable and accessible housing is often a major barrier to remaining in the community for people with severe disabilities and extremely low income.

In July 2011, the State of Delaware signed a Settlement Agreement with the United States Department of Justice (USDOJ) resolving a three-year investigation into the State’s behavioral health care system. The Agreement lays out strategies and benchmarks to ensure Delaware’s compliance with the Americans with Disabilities Act (ADA), specifically the “integration mandate” that services be provided in the least restrictive setting possible as upheld by *Olmstead vs. L.C.* While the Agreement is specific to the population with serious and persistent mental illness (SPMI), the Department of Health and Social Services (DHSS) is carrying its intent and spirit into systemic reform across the Department. Ensuring affordable housing opportunities and choices are available to support community-based care is a critical piece of these reforms. For the State’s affordable housing industry, this shift to prioritizing community-based care means increased focus on integrating units set-aside for people with disabilities in regular multifamily properties, investing resources to meet affordability needs, and coordinating with service providers.

## New Creation of Affordable Rental Housing

Approximately 40% of projected demand for new rental housing from 2015-2020 will be for households with income below 50% of AMI (AMI). As a result of the housing crisis and recession, fewer households of all ages are homeowners, and demand for new housing has shifted to smaller, more affordable homes and rental units. The demand projections are for new units (either new construction or re-use of currently vacant structures) to meet demand created by new household growth. This does not reflect the housing needs of existing cost burdened renter households, described further below.

<b>Rental Housing Demand by Income (2015 – 2020)</b>					
	<30% AMI	30% to 50% AMI	50% to 80% AMI	80% + AMI	Total
<b>Delaware State</b>	1,730	1,455	1,525	2,820	7,530
<b>New Castle County</b>	1,005	845	875	1,385	4,110
<b>Kent County</b>	340	255	280	595	1,470
<b>Sussex County</b>	385	355	370	840	1,950
<i>Source: GCR, Inc.</i>					

While seniors will comprise a large portion of future demand, they are predominately homeowners (84%) and are far more likely to enter or remain in the homeownership market than the rental market. Based on projections, 16% of future rental demand will be for senior rental housing, whereas 32% of future home sales will be from seniors. The majority of senior rental demand is for households below 50% and 30% of AMI.

Following national trends, Delaware households are similarly getting smaller due to the growing number of “empty nesters” and changing demographic trends. There is an increasing demand for 1- and 2-bedroom units. In Delaware, Sussex County has the largest share of people over 65, while South New Castle and North Kent County have the highest percentage of school-age children. HUD Comprehensive Housing Affordability Strategy (CHAS) data, a standard dataset for quantifying housing needs, defines the following household types:

- Small Family – 2 to 4 related individuals with no member 62 years old or older
- Large Family – 5 or more related individuals with no member 62 years or older
- Elderly Family – Family where at least one person is 62 years old
- Elderly Non-Family – Individual or a group of non-related individuals over 62 years old or older
- Non-Family – Individual or a group of non-related individuals with no member 62 years old or older

The household types with the greatest housing problems, in terms of numbers, are small families and individuals. In terms of percentages, senior households are slightly more likely to be cost burdened but make up a smaller percent of severely cost burdened renter households. There are approximately 9,300 elderly renter households in Delaware with income below 50% of AMI.

Statewide, there are 39,850 cost-burdened renter households, 70% (28,155) of these households are below 50% AMI. The lowest income households are the most likely to be severely cost burdened, or paying more than 50% of their income for housing costs. Extremely low-income households are overwhelmingly cost burdened (75%); and almost all of these are severely cost burdened.

## **TAX CREDIT ALLOCATIONS AND POOLS**

No applications will be accepted with Developments of 4 units or less. Developments will compete only within their respective Pools. Developments will be ranked within these Pools and the highest scoring developments in each Pool will be separately evaluated to determine the amount of tax credits required. Applicant tax credit requests should not exceed 10% of the approximate amount available in each pool. Each year DSHA shall establish the percentage of available credits for each Pool based on DSHA's development goals, need for affordable housing in each area, and compliance with State Strategies for Policies and Spending.

### **Non-Profit Pool**

In order to encourage the participation of local and/or State tax exempt organizations, and as required by Section 42 of the IRC, a minimum of ten percent (10%) of the housing credit ceiling for the current calendar year shall be set aside for qualified non-profit organizations. Developments that compete in the Non-Profit Pool, if they do not receive an allocation, will be eligible to compete in their respective pools. If the highest ranking non-profit sponsor requires additional credits, DSHA reserves the right to allocate the additional credits needed from another pool in which the development is qualified and/or issue a forward preliminary reservation for the remainder of credits required. See definition of a qualified non-profit organization.

Note: Ownership entities that include non-profit participation but that do not meet the definition of a Qualified Non-profit organization (see definition of Qualified Non-profit Organization) may apply but will not be eligible for consideration to compete in the Non-Profit Pool.

### **Estimated Dollar Amounts for 2016**

The estimated dollar amounts for 2016 are based on the annual tax credit authority available. 2016 forward reservations and commitments reduce Delaware's net available Tax Credit amount to approximately \$2,607,282.

<b>1. <u>Non-Profit Pool</u></b>	<b>Approximate Tax Credit Authority</b>	<b>\$269,000</b>
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All Eligible Non-Profit Organizations

<b>2. <u>Preservation/Rehabilitation Pool</u></b>	<b>Approximate Tax Credit Authority</b>	<b>\$1,169,141</b>
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- A. Tax Credits: Any tax credit housing development, which has completed its compliance period that is in (1) in need of substantial rehabilitation or (2) at risk of losing its affordability.
- B. Subsidized: Any currently occupied subsidized housing development and/or demolition/new construction of subsidized units (see definition of subsidized housing) (1) in need of substantial rehabilitation or (2) at risk of losing its affordability (within 2 years of application).

To further prioritize preservation developments, Points will be awarded for each of the following factors up to a maximum of ten (10) points. Each factor listed below must be supported and documented as an attachment in the application.

- 1. Require hard cost/rehabilitation expenses that exceed \$50,000/unit\* - 4 points.
- 2. Have committed federal rental assistance contracts - 3 points.
- 3. Property was placed in service on or before December 31, 1995 - 2 points.



- The application is for an elderly project in which 25% of the new affordable units are restricted to residents at 30% of AMI with rents restricted to levels affordable at 30% AMI.

The new housing creation pool was established to encourage new rental housing in response to new household growth and to relieve the conditions of "At-Risk" renter households. "At-Risk" renters are cost-burdened, residing in overcrowded or substandard units, or on assisted housing waiting lists.

### **Other Preliminary Reservation/Allocation Restrictions**

In each calendar year, the total dollar value of the credits that can be allocated under these rules is limited by the State housing credit ceiling provided in Section 42 of the IRC. Applicants seeking these credits shall be ranked in each Pool according to their respective point scores.

Compliance with the requirements of the Code is the sole responsibility of the owner. All applicants should consult their accountant, tax attorney or advisor as to the specific requirements of Section 42 of the Code governing the program.

Credits for all applicants will be limited to no more than: **Fifty percent (50%)** per development of the State's annual Credit authority available during any allocation year, based on the maximum eligible basis limits (see definition of eligible basis limits); or 2) irrespective of the number of developments, no single development entity shall be allocated more than **fifty percent (50%)** of the total annual credit authority available during any allocation year. This shall include but not be limited to, any consultants, co-developers, or joint ventures where the single development entity receives part of the developer's fee. A development entity that reaches **50%** of the total allocation dollars available will have its next ranked development(s) eliminated.

Consideration for a Tax Credit allocation will be given for contiguous properties which may or may not be controlled by a Declaration of Land Use Restrictive Covenants Relating To Low Income Housing Tax Credits or other affordable rental restrictions, as long as: 1) 70% of all units in the proposed project meet the "Preservation/Rehabilitation" definition under this QAP; 2) all contiguous properties will be under common ownership and 3) all contiguous properties are eligible to receive acquisition and rehabilitation Tax Credits under the Code.

Once a development has received an allocation of credits, additional application(s) for credits for a subsequent phased development on the same or contiguous site(s) may not be submitted until such time as the original development is substantially complete and can demonstrate that at least ninety (90%) of the original project is rented to qualified residents and has stable operations. Demonstration can include, but is not limited to, leases, deposits on units, relocation documentation, monthly net income reports and/or income statements. DSHA may waive this requirement at its sole discretion.

If the applicable fraction from application to construction closing/carryover allocation changes due to over-income residents that result in a loss of credits, the difference in any equity will be the responsibility of the Applicant not DSHA.

## **DEFINITIONS**

**The definitions and terms used within DSHA's Qualified Allocation Plan and LIHTC application are an integral part of threshold requirements as well as the review and underwriting process. Therefore each applicant is responsible for ensuring that all applicable terms and definitions are adhered to in the application submitted.**

### **Affordable**

A unit is considered affordable if the cost of housing (rent plus utilities) is income and rent restricted not to exceed 30% of the household income, adjusted for family size.

### **Appraisal**

An independent appraisal, which conforms to the Uniform Standards of Professional Practice and in accordance with any DSHA standards, may be commissioned by DSHA to determine project valuation for the site, land and buildings for projects financed by DSHA. Where applicable, the value of the LIHTC must be provided. Regardless of whether or not the project has received a tax abatement, the appraisal will also provide the most recent tax assessment of the property. The cost of the appraisal will be an eligible cost of the development. Appraisals may be ordered by DSHA when the preliminary rankings are released for the top ranked projects. A Summary Appraisal will still be required for application.

### **Code**

Internal Revenue Code, 26 U.S.C §1 et seq.

### **Community Revitalization Plan**

A municipal, county, or regional plan that has been formally endorsed by a governing body. This includes, but is not limited to, a municipal and/or county Consolidated Plan, local or regional redevelopment plan, neighborhood redevelopment plan as endorsed and approved by local government, or a development that is located in an Enterprise Community. The plan must also be recent to the proposed development and community and certified by the agency that developed the plan. Plans cannot be older than 5 years.

### **Complete Application**

An application including the application, application fee(s), completed forms and all required certifications and an application that meets all threshold and eligibility requirements. A checklist of required documents is provided in the Attachment to the QAP.

### **Consultant**

Consultants can be members of the Development Team. Consultant's duties include, but are not limited to, application packaging, arrangement for syndication, closing preparation, processing draws, management liaison, etc. In order to claim points for consultant experience, the applicant must submit an agreement to DSHA, outlining the current and long-term roles of the consultant that includes the terms, fees, and other conditions. The consultant must also demonstrate that its firm will be with the project from application stage until break-even of operations, if not longer. DSHA has the right to determine Consultant eligibility. Note: Consultant fees must be paid from the Developer's fees and the amount of the consultant fee must be disclosed at application.

## Conversion

Any non-subsidized, non-tax credit housing development considered substandard and in need of substantial rehabilitation that may be converted into newly restricted and assisted affordable housing rental units or conversion of non-residential use to residential use. Completely vacant and/or abandoned structures are considered conversion for purposes of new creation, including HOPE VI or Choice Neighborhood applications. Note: All conversion projects must meet all threshold requirements including minimum square footage and notice of inspection requirements.

## Developer

A Developer is any corporate entity, partner or individual responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished.

## Developer Fee

A developer fee is the amount of identified uses of development funds paid as compensation for developing the proposed housing. This fee covers the overhead and profit of the developer. The amount of developer fee is limited to a maximum of 12% of total development cost excluding developer's fee, transferred reserves, relocation operating deficit reserve, bond prepayment penalty or other penalties, site environmental remediation costs, DSHA assumed debt, and land cost. In all 9% application, the developer fee cannot exceed \$1,000,000.

- For identity of interest acquisitions of either land or existing rental properties, the fee is 9% of the Total Development Cost excluding acquisition, developer fee, transferred reserves, bond prepayment penalty, relocation operations deficit reserve site environmental remediation costs, assumed DSHA debt, and land cost.
- Eligible tax credit basis will not include: 1) developer's fees exceeding the above Developer Fee limits; or 2) any Developer Fee paid on costs exceeding Eligible Basis limits.
- For tax exempt bond projects, the fee cannot exceed \$1,500,000; however, a minimum of \$500,000 of the fee must be deferred and paid only from cash flow as defined by DSHA, with a maximum allowed deferred developer fee of \$750,000. The fee will appear as a deferred developer fee on the cash flow pro forma and must show ability to repay in accordance IRS requirements
- Applications from contiguous properties in the same LIHTC funding round using a combination of 9% and 4% credits will be subject to a reduction in the developer fee, unless each application is for a development of 60 units or more.

## Development Team

Developments must be sponsored by an entity with a Development Team that has development, construction and/or management experience. Members of the Development Team must evidence the capability, as determined by DSHA, which is needed to successfully undertake, complete and operate the development. The entire Development Team must be disclosed at time of application and includes, but is not limited to, the architect, developer, engineer, surveyor, real estate counsel, developer's tax counsel, management agent, general contractor (when general contractor is chosen at application) and processing agent/development consultant (if applicable). Any substitutions of Development Team members from original application or at any time during the construction period must be pre-approved by DSHA.



## **Donated Land**

Donated Land means land (for new construction or acquisition/rehabilitation projects) on which the Development will be built for which title is transferred to the Applicant and for which no consideration is provided, and for which no costs are included in the *Acquisition Costs* of the Development pro forma and budget.

An Applicant or Owner who holds fee title to the land/property must provide a copy of the recorded deed listing the Applicant or Owner as the grantee and a final settlement statement prepared by the title company evidencing the purchase of the property. Estimated settlement statements will not be accepted

If a lease option is submitted, a copy of the agreement must be submitted and the relative agreement must provide for either a closing date or an initial term. The lease to be entered into must be attached and specify a specific rental amount, a term equal to or longer than the Extended Use Period, and provide for the owner of the land to execute the Declaration of Restricted Covenants.

## **Downtown Development District**

The Downtown Development Districts Act of 2014 (the Act) was enacted by the General Assembly in order to:

- Spur private capital investment in commercial business districts and other neighborhoods;
- Stimulate job growth and improve the commercial vitality of such districts and neighborhoods;
- Help build a stable community of long term residents by improving housing opportunities; and
- Assist municipalities in strengthening neighborhoods while harnessing the attraction that vibrant downtowns hold for talented people, innovative small businesses and residents from all walks of life.

This is accomplished through local governments designating Districts and developing corresponding District Plans to support the goals of this Act. Once accepted into this program, the District Plan will serve as the focal point for coordinated action by state, local, and private entities.

## **Eligible State Basis Boost**

DSHA reserves the right to award an eligible state boost in eligible basis of up to thirty percent (30%), as determined by DSHA, for the highest ranked property (ies) to preservation applicants, applicants that target special needs populations, and/or to make projects financially feasible. This additional boost is not available for properties that are in a Qualified Census Tract (QCT) or Difficult to Develop Area (DDA) since a QCT or DDA already qualifies for the additional 30% boost. The State Basis Boost is not available for tax-exempt bond projects. No applications will be accepted with an eligible state basis boost included in the tax credit calculation. DSHA will determine during the ranking/underwriting process if an eligible state basis boost is needed for financial feasibility or for assisting extremely low income households.

## **Elderly Development**

For the purposes of this Allocation Plan, DSHA defines an elderly development as one where all residents are 62 or older or any housing that is specifically designed and operated to assist elderly persons, as defined in a State or Federal program (i.e., Rural Development or U.S. Department of Housing and Urban Development or FHA Risk Share).

Elderly new creation developments are only eligible if one of the following conditions applies:

- The elderly new creation project has a rental subsidy contract for at least 25% of the newly constructed units, or
- The elderly new creation project has 25% of the newly constructed affordable units are restricted to residents at 30% of AMI with rents restricted to levels affordable at 30% AMI.

## **Eligible Basis Limitations**

Eligible basis limits are limitations on total eligible basis as defined in section 42(d) of the code, excluding the QCT 30% adjustment factors based on number of bedrooms. Market rate units are not included in the eligible basis calculation. The limits replicate the Section 234 Basic Mortgage Limits established by HUD and utilized under the HOME Program.

(Effective 01/01/2015) as follows:

<u>0 bedroom</u>	<u>1 Bedroom</u>	<u>2 Bedroom</u>	<u>3 bedroom</u>	<u>4 bedroom</u>
\$140,107	\$160,615	\$195,305	\$252,662	\$277,344

A project whose total eligible basis exceeds the above limit may participate in the program; however, the maximum amount of Credits allocated to a development is limited to the amount of eligible basis or the eligible basis limit, whichever is lower.

## **Energy Audit**

Architect shall hire a professional firm certified by the Building Performance Institute. The firm shall provide an audit of existing properties to determine which energy saving measures can be incorporated into the architects' design. New construction drawings shall also be reviewed by a certified firm to include the proposed energy saving measures into the final design.

## **Environmental Site Assessment**

A Phase I Environmental Site Assessment shall be prepared in accordance with ASTM E-1527-05 and is required for all applications. The report cannot be more than 12 months old at the time the application is submitted to DSHA. The report shall be accompanied by a certification from the applicant stating that any issues raised in the environmental site assessment have been reviewed and budgeted accordingly in the development budget.

## **Environmental Audit**

A Phase I Environmental Audit is required for all applications with existing buildings. The Phase I Audit report must include the results from the following tests: lead in water, lead-based paint, asbestos and radon. Only the executive summary of the report shall be submitted in the hard copy application, however, the full report shall be submitted with the electronic application. Cost estimates for any remediation work shall be provided and included in the executive summary and in the development budget.

## Equity

- **Gross Equity** – the amount of equity raised for the development before any amounts for fees or other deductions are made.
- **Net Equity** - all equity raised for the development less syndication fees imposed by syndicator and allowances by DSHA (i.e., syndicator legal/accounting fees, 1% allocation/carryover fees, transitional reserves, operating reserves, and monitoring fee amounts).

## Identity of Interest

DSHA has further defined identity of interest as it relates to the Developer fee as an affiliate and/or related party that: (i) has a spousal or family relationship, parent-subsidiary relationship, or where owners, officers, directors, partners, stockholders or members of one business entity has a five percent (5%) or more interest in the other business entity; or (ii) where a substantial relationship exists between the parties directly or indirectly through (a) common family, (b) common general partners or members, (c) common control of the entities, or (d) the person or entity is otherwise controlled in whole, or in part, by the other person or entity. A tax attorney's opinion must be submitted at application in order for the related party to qualify for acquisition credits in accordance with Section 42. The opinion must state that the owner is entitled to claim acquisition credits under Section 42 in accordance with IRC related party requirements. However, the opinion is not required for acquisition credits when the property is acquired more than 10 years after the later of the date the building was placed in service or the date of the most recent nonqualified substantial improvements were made or for properties receiving federal subsidy such as HUD Section 8, Section 221(d) 3, Section (d) 4, Section 236 & USDA Section 515 or any other housing program administered by HUD or the Rural Housing Service of the Department of Agriculture.

**Note: See Developer Fee Definition for Related Party Developer Fee Calculation.**

## Interim Income

All project operational income received prior to permanent closing, including Federal housing assistance payments, less routine operating expenses (which includes any debt service normally paid during the construction period, but specifically excluding construction loan interest unless pre-approved in writing by DSHA). Interim income as a funding source must be pre-approved by DSHA. Funding of an approved reserve from interim income will not be considered to have caused a deficit in operations due to off-site relocation. Additionally, interim income may not be used as collateral for any loan (other than a standard assignment of rents and leases), operating deficit guarantee or letter of credit.

## Literally or Imminently Homeless

The definition, in summary, includes individuals and families who lack a fixed, regular, and adequate nighttime residence and includes individuals who live in an emergency shelter or a place not meant for human habitation or leaving an institution where he or she temporarily stayed, or individuals and families who will imminently lose their primary nighttime residence, or unaccompanied youth and families with children who are defined as homeless under other federal statutes, or individuals and families who are attempting to flee some sort of abuse, i.e. domestic, dating, sexual, etc.

## Low-Income Unit

As defined by IRC Section 42(I)(3), a family is considered low income if its income is less than 60% or 50% of AMI, adjusted for family size, depending upon whether the applicant elects to satisfy the "20-50 test" or the "40-60 test" under IRC Section 42(g)(1).

## Market Study

All requirements as outlined in DSHA'S Market Study requirements (See QAP Attachments for requirements) and certified as follows:

The market analyst shall certify that:

- a. He or she is an independent, third party professional with no financial interest in the development other than in the practice of his or her profession;
- b. He or she has the requisite knowledge to proceed with the study;
- c. He or she has personally inspected the subject property and the comparable properties analyzed in the report; and
- d. He or she has conducted the study in accordance with Standards 4 and 5 of the Uniform Standards of Professional Appraisal Practice (USPAP);
- e. He or she certifies that the DSHA's Market Study requirements were followed.

## Mixed Income/Market-Rate Development

A mixed income/market rate development is one where at least 20% and no more than 50% of the total units in the development are not tax credit rent-restricted and not subject to income limits. For projects utilizing the Housing Development Fund, rental rates for market rate units must be set at a level affordable to residents at 80% of AMI.

## New Housing Creation

The creation of newly affordable rent and income restricted units.

- A. **Conversion:** (i) Any non-subsidized, non-tax credit housing development considered substandard (see definition) that needs substantial rehabilitation which will be converted into newly restricted and assisted affordable housing rental units; (ii) conversion of non-residential use to residential use. Note: All conversion projects must meet all threshold requirements including minimum square footage and notice of inspection requirements.
- B. **New Construction:** (i) newly constructed property that is created for newly restricted and/or assisted affordable housing rental units; (ii) completely vacant and/or abandoned structures are considered new creation, including HOPE VI or Choice Neighborhood applications.

In addition, all applicants to this pool will be for developments that are nonelderly unless one of the following conditions applies:

- The application is for an elderly project with a rental subsidy contract for at least 25% of the newly constructed units.
- The application is for an elderly project in which 25% of the new affordable units are restricted to residents at 30% of AMI with rents restricted to levels affordable at 30% AMI.

The new housing creation pool was established to encourage new rental housing in response to new household growth and to relieve the conditions of "At-Risk" renter households. "At-Risk" renters are cost-burdened, residing in overcrowded or substandard units, or on assisted housing waiting lists.

## **Preservation/Rehabilitation**

- A. Tax Credits: Any tax credit housing development, (1) need of substantial rehabilitation or (2) at risk of losing its affordability.
- B. Subsidized: Any currently occupied subsidized housing development or demolition/new construction of subsidized units (see definition of subsidized housing) in (1) need of substantial rehabilitation or (2) at risk of losing its affordability (within 2 years of application).

In order to qualify for the preservation/rehabilitation point category, for each of the above definitions, the application must meet the definition of substantial rehabilitation or submit written confirmation from the Tax Credit agency or subsidy contract administrator that the development's affordability expiration is imminent.

## **Qualified Census Tract**

Defined in Section 42(d)(5)(C) of the Code means a census tract designated by the Secretary of Housing and Urban Development (HUD) in which 50% or more of households have an income less than 60% of median gross income or in which there exists a poverty rate of 25% or greater. A listing of Qualified Census Tracts is included in the QAP Attachments.

## **Qualified Non-profit Organization:**

Pursuant to Section 42(h)(5)(B) of the Code, a qualified non-profit entity means an entity that owns an interest in the development (directly or through a partnership) and materially participates in the development and operation of the development throughout the compliance period and must not be affiliated with or controlled by a for-profit organization.

Section 42(h)(5)(C) of the IRC defines a qualified non-profit organization as:

- i. Such organization is described in paragraph (3) or (4) of Section 501 (c) and is exempt from tax under Section 501 (a);
- ii. Such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and
- iii. One of the exempt purposes of such organization includes the fostering of low-income housing.

For non-profit/for profit joint venture developments, applicant must submit an agreement to DSHA, outlining the current and long-term roles of the partners. An **unqualified** legal opinion must be submitted with the application that states the joint venture meets the requirements of Section 42 of the IRC as it relates to being considered eligible to compete in the Non-Profit Pool. DSHA further requires that the non-profit partner must maintain a 100% ownership interest in the general partner throughout the compliance period.

In addition, in order for a specific non-profit organization known as a Community Housing Development Organization (“CHDO”), under the HOME Program, to participate in a LIHTC rental development and receive HOME funds set aside for CHDOs and related operational expense funding, the CHDO must “Sponsor” the rental housing. A CHDO Sponsor in a LIHTC rental development is defined as follows:

The CHDO must maintain effective project control when acting as a Sponsor of the rental housing. A CHDO sponsors rental housing under the LIHTC Program when the property is owned by:

1. A subsidiary of the CHDO (in which case the subsidiary, which may be a for-profit or nonprofit organization, must be wholly owned by the CHDO);
2. A limited partnership (in which case the CHDO or its wholly owned subsidiary must be the sole general partner); or
3. A limited liability company (in which case the CHDO or its wholly owned subsidiary must be the sole managing member).

If the limited partnership or limited liability company agreement permits the CHDO to be removed as sole general partner or sole managing member, respectively, the agreement must require that the removal be “for cause” and that the CHDO must be replaced by another CHDO. In addition, HOME funds must be provided to the entity that owns the project (HOME funds must be provided to the Limited Partnership or Limited Liability Company (Owner) in a LIHTC development rather than to the CHDO itself).

Ownership entities that include non-profit participation but that do not meet the definition of a Qualified Non-profit organization (above) may apply but will not be eligible for consideration to compete in the Non-Profit Pool.

### **Related Party**

IRS regulations state that two persons are related if the same persons own more than fifty percent interests or profits in multiple partnerships. Also see Identity of Interest definition.

### **Special Populations and Target Units**

Developments must set aside a minimum of 5% of all units for special populations (target units). Target units are: 1) set-aside for special populations as defined below; 2) are rent- and income-restricted to 40% of AMI (AMI); and 3) have tenants referred from a referral system as managed by DSHA. Developments with project based rental assistance must target at least 5 units, regardless of the size development, or 5% whichever is larger.

Targeted special populations include:

- Veterans;
- Persons with HIV/AIDS related illness;
- Literally or Imminently Homeless;
- Survivors of Domestic Violence (in accordance with Delaware State Code Title. 13, § 703A);
- Persons with Disabilities including persons with mental illness; persons with physical disabilities; persons with intellectual or developmental disabilities;
- Youth exiting foster care or persons exiting state run-institutions; and
- Other special needs populations identified in DSHA’s needs assessment may be considered at DSHA’s sole discretion.

Target units may not be segregated within in the property or in any way distinguishable from non-targeted units (beyond the presence of accessible features or assistive technology) and targeted unit mix will depend on the needs of the referred households.

An agreement shall be in place with the referring entity, DSHA, and the owner to assure that sufficient referrals of special population-eligible households for tenancy are received at the time of execution of the carryover agreement.

Applicants shall be willing to allow for physical or safety accommodations necessary for the target populations. For example, for survivors of domestic violence may require additional security systems within their own units, safety ladders, unit requests for floors and/or buildings, or panic bars on certain entrance doors.

When target units are not occupied by households that need the target unit, a lease addendum for the non-special needs household will be required for the non-special needs household to transfer to the next available non-target unit (of comparable or smaller size) when a household that needs the target unit applies and is accepted to the development.

All applicants will complete a targeting plan and will sign an agreement certification and memorandum of understanding with DSHA.

### **Section 811 Project Rental Assistance Demonstration (PRA Demo) Program**

The Section 811 Supportive Housing for Persons with Disabilities is a U.S. Department of Housing and Urban Development Program. Through the Section 811 Supportive Housing for Persons with Disabilities program, HUD provides funding to develop and subsidize rental housing with the availability of supportive services for very low- and extremely low-income adults with disabilities. The Frank Melville Supportive Housing Act of 2010 made broad changes to the Section 811 Supportive Housing Program, including the authorization of a demonstration program to distribute project-based rental assistance via state housing finance agencies who have established partnerships with their state departments of health and social services to provide services. This demonstration program (“Section 811 PRA Demo Program”) was announced via NOFA in 2012, and in early 2013, HUD announced its intent to award DSHA funding.

The PRA Demo Program will allow DSHA to enter into Rental Assistance Contracts (RACs) with new or existing multifamily housing complexes funded with other Federal or State assistance (Low Income Housing Tax Credit, HOME, or other State, Federal or local programs, such as the Housing Development Fund). Under the RACs, HUD, via DSHA, will provide rental assistance for a percentage of units in the development to target extremely low income nonelderly people with disabilities. Additional detail about the PRA Demo Program at the HUD level may be found at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/grants/section811ptl/demoNOFA](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/grants/section811ptl/demoNOFA). DSHA intends to first target units to existing multifamily projects. If not all units are distributed to existing sites, they may be made available to projects seeking LIHTC financing.

## **Social Services**

One or more of the following types of services to improve the quality of life of the residents of the development may be offered. The services must be affordable, appropriate, available, accessible and the service must be provided to the development's residents in every calendar quarter for a total of 8 hours per year. In order to receive the maximum number of points (3), at least three qualifying services must be provided, representing a total of 24 hours of qualified services provided to the development's residents. Applicants must submit a narrative describing the services to be provided, a curriculum for any classes, description of why the services are appropriate for the population, how the services will be publicized and marketed, and expected outcomes and benefits. The services must be distinct to qualify for the points – for example a series of financial literacy classes, even on different topics such as budgeting/spending or understanding your credit/credit counseling, would count as one financial literacy class. The cost and source of funds to pay for social services must be included in the application. Services should be actively linked to the residents and not simply provided to the community at large and can be provided on-site or off-site. If services are provided off-site, a memorandum of understanding (MOU) with the off-site service provider (i.e., senior center, service center, etc) must be submitted with the application. The MOU must stipulate a transportation plan for regularly scheduled trips to the facility and classes, a schedule of classes, attendance proof and record keeping, as well as the narrative described above.

Examples of services include but are not limited to:

- Parenting programs;
- Literacy programs;
- Day Care;
- Job Training;
- Nutritional services;
- Transportation services;
- Financial literacy and counseling;
- Adult Day Care; and
- Substance Abuse Counseling or Referral.

DSHA allows for reasonable substitutions of services at DSHA's discretion. Prior to application deadline, Applicants are invited to propose social services in writing, in addition to those listed and may, in DSHA's discretion, receive points for them.

## **Subsidized Housing**

Any housing that presently has United States Housing & Urban Development (HUD), USDA Rural Housing Service (RD), HUD public housing subsidies and/or equivalent project-based rental assistance contracts. Demolition/new construction of subsidized units are eligible as subsidized housing, if the subsidy contract remains intact, and at least 75% of the subsidized units are to be replaced and meet the substantial rehabilitation threshold. A copy of any pertinent contract for subsidy must be submitted with the application.



## Substandard Housing

Substandard housing, is a unit or building that meets the definition below and is in need of substantial rehabilitation in order to make the unit or building structurally sound, safe and habitable and meet local housing or building codes.

A housing unit is substandard if it has one or more of the following conditions:

1. Does not provide safe and adequate shelter.
2. Endangers the health, safety, or well-being of a family in its present condition.
3. Has one or more critical defects.
4. Has a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. (The defects may involve original construction or they may result from continued neglect or lack of repair or rebuilding).
5. Does not have operable indoor plumbing.
6. Does not have a usable flush toilet, bathtub or shower inside the unit for the exclusive use of a household.
7. Does not have electricity or has inadequate or unsafe electrical service.
8. Does not have safe or adequate source of heat.
9. Does not have a kitchen.
10. Has been declared unfit for the habitation by an agency or unit of government.

Critical defects include: Walls or partitions or supporting members, sills, joists, rafters, or other structural members list, lean, or buckle, are rotted, deteriorated, or damaged, with holes or cracks. Floors or roofs do not have adequate supporting members and strength to be reasonably safe. Foundation walls, piers or other supports are deteriorated or damaged. Steps, stairs, landings, porches, or other parts or appurtenances are maintained in such condition that they will fail or collapse. The roof, flashings, exterior walls, basement walls, floors, and all doors and windows are not weathertight.

**NOTE:** “Single room occupancy” (SRO) housing is NOT substandard solely because it does not contain sanitary or food preparation facilities (or both). SRO is a unit which contains no sanitary facilities or food preparation facilities or which contains one but not both types of facilities and which is suitable for occupancy by a single eligible individual capable of independent living in accordance with 24 C.F.R. § 882 102.

## **Substantial Rehabilitation**

All units in a Development must receive the same upgrades/modifications or rehabilitation work and be brought up to the same standards. A Rehabilitation development is considered to be undergoing substantial rehabilitation if the minimum rehabilitation cost per unit is at least \$30,000 of hard cost and meets both of the following conditions (unless otherwise approved by DSHA):

- Condition One:                      The building's most recent use has been residential.
  
- Condition Two:                      One hundred percent (100%) of the units within the existing structural framing are being rehabilitated.

Developments with rehabilitation and new construction combined will not be considered rehabilitation developments if more than 25% of the existing units are added as new units to the site. An exception as defined in Subsidized Housing previously will be made for HUD's public housing program. Conversely, for projects that are removing units for accessibility purposes or adding a community center, at least 75% of the original unit configuration must be maintained.

## THRESHOLD REQUIREMENTS

**Applications shall meet all of the threshold eligibility requirements listed in this section in order to be admitted into a Pool. In addition, applications must meet all applicable definitions and terms within the QAP and related documents for threshold purposes.**

### IRS Threshold Requirements

1. Projects must set-aside a minimum of:
  - a. 20% of the units to be occupied by households with incomes at or below 50% of median gross income, adjusted for family size, for each county; or
  - b. A minimum of 40% of the units to be occupied by households with incomes at or below 60% of median gross income adjusted for family size, for each county.

The choice between complying with the 20-50% test or the 40-60% test, as well as the determination as to the number of housing units that will be set aside for low-income households in total, must be made at the time of application for Credit and maintained for the entire compliance period. Once made, both decisions are irrevocable.

2. Units must be rent-restricted with gross rents for a qualifying unit at or below 30% of the Imputed Income Limitation applicable to such units. If the costs of any utilities, excluding telephone, are paid directly by the tenant(s), the gross rent must include the applicable utility allowance. Utility allowances are determined by HUD and local housing authorities. A development can use these allowances or when applicable, justify their own by using local utility company estimates, HUD Utility Schedule Model, or Energy Consumption Model (see DSHA's Compliance Monitoring Manual for more information). HUD, local housing authority utility allowances or local utility company estimates must be updated annually.
3. The Imputed Income Limitation applicable to a unit is the income limitation which would apply to an individual occupying the unit if the number of individuals occupying the unit were as follows:
  - a. SRO or efficiency (no separate bedroom) - 1 person
  - b. One or more separate bedrooms - 1.5 individuals for each separate bedroom.
4. Tax Credit units must be developed and maintained in equivalent quality and square footage as non-tax credit units.
5. All units must meet applicable building and/or housing codes.

## **DSHA Threshold Requirements**

**Note: For Developments that have previously received tax credits, the compliance period must have expired on all buildings before re-applying for tax credits, unless applying for contiguous properties under the preservation/rehabilitation pool. See Preservation Pool requirements for further information.**

### **1. State Strategies for Policies and Spending**

DSHA promotes the use of the State Strategy Levels areas by tailoring programs based on the Levels. For example: in order for a developer to apply for Low Income Housing Tax Credits, it is a threshold requirement that proposals for newly constructing or rehabilitating affordable rental communities be located in Investment Levels 1, 2, or 3. The Housing Development Fund's (HDF) homeownership loans and grants are also targeted to Levels 1, 2, and 3. While development proposals are permitted in environmentally sensitive areas, pursuant to State Strategies for Policies and Spending, special consideration should be made to protect the environment. In keeping with State Strategies for Policies and Spending, tax credit developments should as much as practical integrate into existing residential communities and neighborhoods. Surrounding uses must be compatible with the proposed development and the proposed design shall be compatible with existing architecture in the area. Delaware Strategies and Maps can be accessed on the web at: <http://stateplanning.delaware.gov/>

### **2. Compliance with Discrimination Laws**

All applicants must comply with the provisions of any federal, state or local law prohibiting discrimination in housing on the grounds of race, color, sex, creed, handicap/disability and familial status, sexual orientation, or national origin, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 88 352, 78 Stat. 241), all requirements imposed by or pursuant to the Regulations of HUD 24 CFR Subtitle A, Part 100 issued pursuant to that title; regulations issued pursuant to Executive Order 11063, and Title VII of the 1968 Civil Rights Act, as amended by the Fair Housing Amendment Act (Public Law 100-430) and Americans with Disabilities Act (Public Law 101-336). In addition, recipients of federal funds (i.e. RHS HUD financing) must comply with Section 504 of The Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

### **3. Minimum Household Size**

The minimum household size eligible for each affordable housing unit has been established by DSHA. The minimums are as follows: Efficiency - 1 person; one bedroom - 1 person; two bedrooms- 2 persons; three bedrooms- 3 persons; and four bedrooms- 6 persons.<sup>1</sup>

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<sup>1</sup> DSHA reserves the right to waive minimum household size eligibility for two bedroom units when it is satisfied that conditions exist that indicate difficulties in finding qualified families to rent two-bedroom units. Such conditions include, but are not limited to: Market condition shifts; low absorption rates; no waiting lists; large number of one person household applicants; excessive vacancies for extended periods of time and increased elderly household demand. If conditions can be documented, a development owner may apply in writing for a waiver. DSHA, may elect to permit occupancy by one person in a two-bedroom unit for a maximum of 10% of the total number of two-bedroom units in a property. Requests for the waiver will only be accepted 24 months after development has reached 100% occupancy. For elderly only properties, one person households may be eligible for two-bedroom units. However, priority must be given to two person elderly households on the waiting list.

#### 4. Minimum Gross Square Footage

DSHA has established a minimum gross square footage requirement for new construction and conversion developments, as well as, conversion of non-residential units to residential use that is based on bedroom size. The following gross square footage dimensions are the minimum required by bedroom:

- one bedroom - 700 square feet
- two bedrooms - 850 square feet
- three bedroom - 1,050 square feet
- four bedroom - 1,300 square feet
- efficiencies, which include lofts, - 500 sq. ft. and *Single Room Occupancy* (SRO) - 100 sq. ft. <sup>2</sup>

Square footage of units may not be averaged to meet minimum square footage requirements.

*For City of Wilmington applications, DSHA will follow the 2003 International Building Code, City of Wilmington definition of SRO / Efficiency. An efficiency living unit shall conform to the requirements as follows:*

1. *The unit shall have a living room of not less than 220 square feet (20.4 m) of floor area. An additional 100 square feet (9.3 m) of floor area shall be provided for each occupant of such unit in excess of two.*
2. *The unit shall be provided with a separate closet.*
3. *The unit shall be provided with a kitchen sink, cooking appliance, and refrigeration facilities, each having a clear working space of not less than 30 inches (762 mm) in front. Light and ventilation conforming to this code shall be provided.*
4. *The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.*

#### 5. Target Units

All developments will be required to target 5% of the total units or 3 units, whichever is greater, to be set-aside for special population eligible households as defined below and household income at 40% of AMI or below.

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<sup>2</sup> The minimum gross square footage is measured from the face of the exterior sheathing to the center line of the party wall (exclusive of storage and common areas). Storage and common areas are defined as areas contiguous to units but not part of the units' living area such as attached storage sheds, storage rooms, stairs and halls in common areas.

Applicants shall occupy target units with eligible special populations listed below:

- Veterans;
- Persons with HIV/AIDS related illness;
- Literally or Imminently Homeless;
- Survivors of Domestic Violence (in accordance with Delaware State Code Title. 13, § 703A);
- Persons with Disabilities including persons with mental illness; persons with physical disabilities; persons with intellectual or developmental disabilities;
- Youth exiting foster care or persons exiting state run-institutions; and
- Other special needs populations identified in DSHA's needs assessment may be considered at DSHA's sole discretion.

An agreement shall be in place with the referring entity, DSHA, and the owner to assure that sufficient referrals of special population-eligible households for tenancy are received (which will be executed with the carryover agreement). DSHA is developing a supportive housing referral system for applicants to utilize to provide referrals of special populations-eligible households who are connected to supportive services. This process must also be described in the Targeting Plan (QAP Attachments)

The Declaration of Restrictive Covenants (extended use agreement) will require that the targeted units are maintained and that a corresponding number of units are marketed to and set-aside for special population-eligible households throughout the compliance period. The owner will also agree that targeted units will not be segregated within in the property or in any way be distinguishable from non-targeted units (beyond the presence of accessible features or assistive technology) and targeted unit mix will depend on the needs of the referred households. Applicants shall be willing to allow for physical or safety accommodations necessary for the target populations.

When target units are not occupied by special population-eligible households, a lease addendum for the non-special population-eligible household will be required for the non-special population-eligible household to transfer to the next available non-special population unit (of comparable or smaller size) when a special population-eligible household applies and is accepted to the development.

Target units must be reserved exclusively for the target population(s). If a project is unable to fill a unit with the targeted population after a sixty (60) calendar day referral period, the unit may be leased to another household with incomes at 50% AMI or below. The next available 50% AMI unit in the Project shall be marketed to the Project's original targeted population until the project is in compliance with percentage for which it received points. The sixty (60) calendar day period at lease-up will be measured from the date upon which the project achieves 80% occupancy and at turnover will be measured from the date upon which the unit is determined ready for occupancy following move-out by the prior tenants and completion of any unit turn cleaning, repairs, or maintenance.

Additionally, if the applicant/development is a recipient of an award of project-based subsidy from HUD through the Section 811 Demonstration Program funds, the owner/development will be required to comply with certain applicable Section 811 program restrictions.

All applicants will complete a targeting plan (see QAP Attachments) and will sign an agreement a certification and memorandum of understanding with DSHA.

NOTE: The mandatory Fair Housing requirement of 5% fully accessible units will not automatically satisfy this target unit threshold. Target threshold units must also have households with incomes of 40% of AMI or less and those households may not need a fully accessible unit.

## 5. Market Study

In order to demonstrate the need and demand for the proposed development in a market area, a comprehensive market study of the housing needs of low-income individuals in the area to be served by the development must be submitted with the application. (See QAP Attachments for requirements of the Market Study.) The market study should be conducted within six months of the date of application submission. The assumptions used in the market study must precisely reflect the information provided in the application. If DSHA determines there is an insufficient market need or demand, the application shall be deemed ineligible. DSHA must pre-approve the market study provider.

## 6. Development Team

Applicants **are not** eligible to compete if they:

- a. Have a general partner, voting member, developer or an affiliated entity who owned a managing or controlling interest in an LIHTC development when title was foreclosed by entry of judgment or deed in lieu of foreclosure during the past seven years.
- b. Have a general partner, voting member, developer, related party, or an affiliated entity who has failed to utilize credit within program time guidelines causing the recapture of said credits.
- c. Have a general partner who has been removed or withdrawn under threat of removal from a tax credit development.
- d. Have a general partner, voting member, developer, related party, or affiliated entity that owns a managing or controlling interest in any LIHTC development that has failed to submit annual development certifications and/or is delinquent in payment of monitoring or other required LIHTC fees.
- e. Have failed to fulfill any obligations committed to in a previous application for LIHTC that has not been corrected to DSHA's satisfaction. Such obligations include, but are not limited to, substantial design changes, did not build project as represented, failure to provide the minimum DSHA Construction Standards, exceeds proposed cost per unit, failure to implement waivers, and/or termination of credits by DSHA.
- f. Have had IRS Form 8823, "Low Income Housing Tax Credit Agencies Report of Noncompliance" filed on a development during previous year(s) that has not been corrected to DSHA's satisfaction.
- g. Have any development that is not complying with its Declaration of Restrictive Covenant Provision, including, but not limited to, not providing social service commitments, additional income restrictions, elderly preferences, public housing waiting lists, and the commitment to renew housing assistance contracts.

Notwithstanding the above, DSHA may, in its sole discretion, waive the threshold eligibility restrictions pursuant to subsection [c] of this section upon a showing by the applicant of good cause. Any such decision shall be final and not subject to review.

## 7. Site Control

Sponsors must have sufficient site control to enable the development to move forward if a preliminary reservation is made. Site control can be demonstrated by recorded deed, recorded long-term lease, municipal or county disposition and development agreement, an option to purchase or lease, or a purchase contract. The sales agreement or lease agreement and all pertinent terms therein must be submitted at the time of application. **DSHA reserves the right to determine a development is ineligible to compete for Tax Credits where site control documentation is amended after application.**

## 8. Local Zoning/Planning Approvals

Applicants must submit documentation that the following approvals are in place or can be obtained without jeopardizing an allocation of credits.

- a. Zoning - Properties must be zoned for its intended use. If variance or exception is required, applicants must provide documentation illustrating the present status of the proposed zoning change, the local planning and zoning process and must submit evidence that appropriate approval can be obtained within the required period.
- b. If no zoning or site plan approval is required, applicant must submit a letter from the appropriate municipal official indicating such or the applicant or developer may provide such certification.

## 9. Public Housing and Section 8 Waiting Lists and DelawareHousingSearch.org

- a. Applicants must agree to market their developments to the local public housing waiting lists and/or Section 8 existing waiting lists. The application must contain a letter from the appropriate agency.
- b. All Applicants, if awarded credits, must agree to list and maintain their development data on [www.delawarehousingsearch.org](http://www.delawarehousingsearch.org).

## 10. Financial Feasibility

Applicant shall provide one financing plan for the proposed development and shall demonstrate that the proposed development is financially feasible and viable as a qualified low-income housing development throughout the Extended Use Period. The housing credit dollar amount allocated to a development shall not exceed the amount DSHA determines is necessary for the financial feasibility of the development.

**At time of Tax Credit application:** For construction and permanent financing, written letters of interest or letters of intent must be provided. Applicants must provide letters from the lending entities, which include items, such as: amount of financing requested, interest rate, term and a statement that the development is eligible for financing under the lender's requirements. The documentation provided will be used to determine financial feasibility and the Leveraging of Non-DSHA Administered Resources point category.

For public and private financing subsidies, written letters of interest, letters of intent, or proof of application must be provided (i.e. including, but not limited to, USDA Rural Development, HOME, HOPE VI, Section 202, Federal Home Loan Bank funding, local municipalities, foundations, etc.). The documentation provided will be used to determine financial feasibility.

Commitment letters or contracts for public and private financing subsidies are required for ranking points in the Leveraging of Non-DSHA Administered Resources and/or Local Government



Contribution categories. (Existing federal financing/rental subsidy contracts for current Section 8/USDA Rural Development projects will be considered for the leveraging category and financial feasibility).

**During DSHA's application review:** should DSHA receive information that public or private financing subsidies have been denied, DSHA will review the information and will either determine the application feasible and will continue with the application review or determine the application ineligible.

**After DSHA has released the ranking:** for projects that have not received anticipated commitments for public or private financing subsidies, DSHA will condition the project's ranking on receipt of subsidy by a specific deadline. Upon expiration of the deadline, such conditional ranking will be revisited and applications will be re-ranked accordingly or deemed ineligible.

DSHA reserves the right, based on documentation submitted and DSHA's underwriting criteria as well as the submitted market analysis, to determine that a development is not viable and/or feasible. If such determination is made, applications will be deemed ineligible.

During any period of the application review process or underwriting, more extensive reviews of the applications may be completed and factors may be re-examined. These factors include, but are not limited to the reasonableness of the costs, feasibility, additional information received/requested and construction timetables. In the event that a more extensive review reveals a change that affects a ranking, the application will be re-ranked accordingly or deemed ineligible.

Applicants seeking to fill a funding gap (amount approved by DSHA) and coming out of pocket shall submit a certification that the applicant has the amount of cash or other resources, as approved by DSHA, required to fill the funding gap. If a developer fee pledge is to be utilized to fill a funding gap, no more than 50% of the developer fee may be used.

## **11. Minimum Construction Requirements**

All developments must adhere to minimum construction standards and all other DSHA construction requirements regardless of financing source(s) (including tax-exempt bond financing and DSHA permanent financing). In order to meet minimum threshold requirements, the Rehabilitation Standards Checklist (see QAP Attachments) must be fully completed for rehabilitation projects. These standards have been outlined in the Attachments to the Qualified Allocation Plan. Based on these minimum standards, DSHA reserves the right to determine a development is ineligible to compete.

**For acquisition rehabilitation developments, including conversion projects, DSHA Development Section must be notified in writing sixty (60) days in advance of application submission for a pre-inspection.**

### **Displacement**

No development will be eligible to compete for an allocation of credits if the application requires that existing residents be involuntarily and permanently relocated due to income ineligibility for tax credit purposes.

## **12. Internal Revenue Form 8821**

IRS Form 8821, Tax Information Authorization, must be signed at application by the developer/sponsor. This form will allow the IRS to share taxpayer information with DSHA.

### **13. Rehabilitation**

Any development allocated rehabilitation credits must vacate units in order to complete renovation activities and also provide relocation assistance to tenants in accordance with the more stringent of the “DSHA Residential Anti-displacement and Relocation Plan” or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, and current HUD handbooks.

### **14. Minimum Point Score**

All sponsor applications must score a minimum of sixty-five (65) for an award of credits.

## **RANKING AND POINTS**

### **Increase in the Compliance Period**

For increases in the compliance period, zero to six (0-6) points shall be awarded. One point will be awarded for every five-year period the compliance period and extended use period is extended. During the extended use period, owner may not choose to exercise its Opt-Out provision.

<b>Years</b>	<b>Compliance Period</b>	<b>No Opt-Out During Extended Use Period</b>
<b>15 years</b>	<b>0</b>	<b>0</b>
<b>20 years</b>	<b>1</b>	<b>1</b>
<b>25 years</b>	<b>2</b>	<b>2</b>
<b>30 years</b>	<b>3</b>	<b>3</b>

During the extended use period, the owner (General Partner) must waive its Qualified Contract Rights and opt-out rights (to sell, transfer, re-syndicate) for the period chosen. A waiver for re-syndication for substantial rehabilitation may be considered by DSHA during the extended use period. Documentation that clearly states the compliance and extended use period must be provided as an exhibit to the application.

### **OR**

Six (6) points will be awarded to developments that will be converted to home ownership for the residents after the initial fifteen (15) year compliance period has expired. In such instances, the extended use period will be waived. The deed of easement and Declaration of Restrictive Covenants shall reflect a right of first refusal be granted by the owner to the residents. Units must be offered at the units' fair market value at the time of the original resident's initial occupancy of the unit. Total costs per unit is subject to the limits of Section 221 (d)(3)(ii) of Section 42. Applicants must submit a detailed marketing plan which includes projections on maintenance, tenant reserve funds, homeownership training, continued affordability, sales price calculation, lease/purchase agreements, etc. The plan will be evaluated for feasibility and compliance with all regulations (Section 42, Fair Housing, and all other funding sources requirements). Syndication documents must reflect the conversion.

### **Balanced Weighted Income Targeting**

Up to ten (10) points will be awarded based on the weighted overall development's average of AMI targeting by bedroom in a project. For purposes of this calculation, the lowest income level will be 30% of AMI. SRO or efficiency units will be counted as 0.67 bedrooms, and all weighted averages will be rounded to the nearest full percentage point. To calculate the weighted average, applicants should use the median income tab on the LIHTC Application Part II - Pro forma. The median income is determined by the number of income-restricted bedrooms serving each percentage of area median income by multiplying the number of units of a given size by the number of bedrooms per unit.

Points	Average AMI Overall Project
10	30-35%
8	36-40%
6	41-45%
4	46-50%
2	51-55%
1	55-58%
0	>58%

Note: For this calculation, DSHA will round up to the nearest percentage.

### **Mixed Income/Market Rate**

Three (3) points will be awarded to a development where at least 20% and no more than 50% of the total units in the development are not rent-restricted and not income-restricted. For applicants requesting Housing Development Funds or other DSHA financing, rental rates for market rate units will be established at a level affordable to residents at 80% of AMI.

**Per Unit Cost Reduction**

Two to five points (2-5) will be awarded to Developers whose Total Development Costs (TDC) per unit costs are less than DSHA’s cost containment guidelines below:

Up to 5 points will be awarded to projects that cost less than DSHA’s cost containment guidelines. While maintaining aesthetic and livable standards, it is DSHA’s objective to fund as many applications as possible. Because credits and DSHA funds are limited, costs per type of unit and costs per unit are important factors in analyzing applications, as well as a required consideration for subsidy layering. DSHA has adopted cost guidelines to evaluate the total development cost for all projects. DSHA has also developed cost guidelines (for line items) to be used as a tool when estimating costs.

All projects must meet DSHA’s minimum construction standards and for acquisition/rehabilitation projects including preservation, conversion and tax-exempt bond properties must also meet the minimum substantial rehabilitation requirements.

**Cost Guidelines**

Type of Project	Per Unit Average
<b>New Construction</b>	<b>\$186,009</b>
<b>Acquisition/Rehabilitation*</b>	<b>\$156,633</b>

\*Includes Conversion projects.

Projects will receive points for being below DSHA’s cost guidelines by at least 5%. Projects that exceed the cost limits or are less than 5% below the limit will not receive points in this category.

**Points**

> 5% - 9.99% below cost containment	2
>10% - 14.99% below cost containment	3
>15% - 19.99% below cost containment	4
> 20% below cost containment	5

Example:	Acquisition/Rehabilitation Project/TDC:	\$7,000,000
		÷50 (# of units)
		= \$140,000 <b>per unit project TDC</b>
	Average per unit TDC:	\$156,633
	Less project per unit TDC	-\$140,000
		= \$16,633 cost below average TDC
	Cost Below Average TDC	\$16,633
	Divided by Average TDC	÷\$156,633
		= 10.62% below average TDC = 3pts

## **Integrated Housing for Special Populations**

Up to five (5) points will be awarded to applicants who shall increase the number of target units set aside for special population-eligible units to 10% or 6 units, whichever is greater from the mandatory 5%. The units from the 5% threshold requirement may be counted toward the total percentage for scoring in this section, as long as the threshold units and the additional units continue to be income and rent restricted at 40% AMI (AMI) or below. Special population eligible households are households with income at 40% of AMI or below and in one or more of the following populations:

- Veterans;
- Persons with HIV/AIDS related illness;
- Literally or Imminently Homeless;
- Survivors of Domestic Violence (in accordance with Delaware State Code Title. 13, § 703A);
- Persons with Disabilities - including persons with mental illness; persons with physical disabilities; persons with intellectual or developmental disabilities);
- Youth exiting foster care or persons exiting state-run institutions; and
- Other special needs populations identified in DSHA's needs assessment may be considered at DSHA's sole discretion.

An agreement shall be in place with the referring entity, DSHA, and the owner to assure that sufficient referrals of special population-eligible households for tenancy are received. DSHA is developing a supportive housing referral system for applicants to utilize to provide referrals of special populations-eligible households who are connected to supportive services.

The Declaration of Restrictive Covenants (extended use agreement) will require that the targeted units are maintained and that a corresponding number of units are marketed to and set-aside for special needs-eligible households throughout the compliance period. The owner will also agree that targeted units will not be segregated within in the property or in any way be distinguishable from non-targeted units (beyond the presence of accessible features or assistive technology) and targeted unit mix will depend on the needs of the referred households. Applicants shall be willing to allow for physical or safety accommodations necessary for the target populations.

When target units are not occupied by special population-eligible households, a lease addendum for the non-special population-eligible household will be required for the non-special population-eligible household to transfer to the next available non-special population unit (of comparable or smaller size) when a special population-eligible household applies and is accepted to the development.

Target units must be reserved exclusively for the target population(s). If a project is unable to fill a unit with the targeted population after a sixty (60) calendar day referral period, the unit may be leased to another household with incomes at 50% AMI or below. The next available 50% AMI unit in the Project shall be marketed to the Project's original targeted population until the project is in compliance with percentage for which it received points. The sixty (60) calendar day period at lease-up will be measured from the date upon which the project achieves 80% occupancy and at turnover will be measured from the date upon which the unit is determined ready for occupancy following move-out by the prior tenants and completion of any unit turn cleaning, repairs, or maintenance.

All applicants will complete a targeting plan, signed certification and memorandum of understanding with DSHA.

## **Section 811 Project Rental Assistance Demonstration**

In March 2013, DSHA was awarded a \$5 million grant from HUD under the Section 811 Project Rental Assistance Demonstration Program (PRA Demo). The grant will enable Delaware to provide project-based Section 811 rental assistance for approximately 140-170 units that will be occupied by extremely low income non-elderly people with disabilities. Section 811 PRA Demo-Eligible households will be referred to the applicants/developments that are awarded rental assistance by a referral system managed by DSHA.

DSHA will award up to three (3) points to applicants, for non-subsidized developments with non-elderly special population units that meet the Section 811 requirements - if the applicant agrees to accept, if offered by DSHA, the assignment of Section 811 project-based subsidies on their non-elderly special population units and to comply with the requirements of the PRA Demo Program. Applicants should note that HUD's Section 811 program represents a federal funding stream and may trigger various federal regulations, including but not limited to, Davis-Bacon and Environmental Records Review.

To receive these points, a project must be eligible to receive Section 811 funding and must not already have project-based rental assistance in place for the targeted units. Additionally, to receive these points the project must select households with disabilities as the target population for its special population units and agree to use the supportive housing referral network under development that will serve both special populations and the PRA Demo program. Only non-elderly projects are eligible.

All applicants will complete a signed certification for the application and a rental assistance contract with DSHA prior to being placed in service.

Additional information about the Section 811 program can be found at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/grants/section811ptl](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/grants/section811ptl)

## **Additional Fair Housing and Americans with Disabilities Act (ADA) Units**

Three to five (3-5) points are awarded for developments that exceed the Fair Housing and ADA minimum requirement threshold of maintaining 5% of the **total** unit count as fully accessible units.

- Property provides 10% fully accessible units                      3 points
- Property provides 15% fully accessible units                      4 points
- Property provides 20% fully accessible units                      5 points

Accessible units should be marketed and rented to households that need the accessible features. Applicants are required to list their development and all accessible units on [www.delawarehousingsearch.org](http://www.delawarehousingsearch.org). When accessible units are not occupied by households that need the accessible features, a lease addendum for the non-disabled household will be required for the non-disabled household to transfer to the next available non-accessible unit (of comparable or smaller size) when a household that needs the accessible features applies and is accepted to the development.

For acquisition/rehabilitation projects, ADA units must not be concentrated in a given area (i.e. segregated to only one floor, building, or section of the development).

### **Local Government Contribution**

One to five (1-5) points are awarded for developments that receive written financial support by commitment letter or other documentation (i.e. executed grant agreement, award letter, etc) from local government. Evidence of approved local government contribution must be submitted to DSHA from the local government entity detailing the dollar amount of the waiver or contribution. A local contribution must reduce the development or operating costs of a development by at least 1%. This can be in the form of municipal or county funding (including CDBG or HOME funds) or local public housing authority capital funding, waiving of building permit fees, granting of a tax abatement, donation of land or land provided at a nominal price, or some other documented form of assistance, as approved by DSHA, that financially reduces the development cost or reduces the operating cost of the project over a five-year period.

- 1% - 1 point
- 2% - 2 points
- 3% - 3 points
- 4% - 4 points
- 5% - 5 points

### **Leveraging of Non-DSHA Sources**

Zero to twenty points (0-20) will be awarded for the leveraging of permanent funding sources not controlled by DSHA. DSHA controlled funds include: Housing Development Funds, Affordable Rental Housing Funds, Preservation Funds, DSHA HOME funds, and project reserves (held or not held by DSHA). Permanent financing from sources other than DSHA is considered leveraging (i.e., Private conventional lenders, USDA Rural Development (rolled debt or new), local municipality HOME funds, HOPE VI, Section 202, Federal Home Loan Bank funding, local municipalities funds, foundations and other permanent sources, value of donated land or subsidized land leases). Tax Credit equity (including Historic Equity) is not considered a permanent funding source.

Percentage of Development's permanent funding that is not a DSHA source	Points
91-100	20
81-90	18
71-80	15
61-70	12
51-60	9
36-50	7
20-35	5
0-20	0

Note: For this calculation, DSHA will round up to the nearest percentage. DSHA fully amortizing first or DSHA interest-only payments are not included in this calculation. In the event that a change is revealed, after further review, underwriting , or at any time, (including DSHA fully amortizing debt or interest only debt cannot be attained), the application will be re-ranked accordingly or deemed ineligible.



## **Promoting Balanced Housing Opportunities**

In order to balance housing investments and encourage the creation of affordable housing opportunities within the State of Delaware in areas that contain little or no affordable housing, but which may offer economic opportunity, proximity to the workplace, high performing schools, or supportive infrastructure, ten (10) points will be awarded to developments that are in Areas of Opportunity.

Developments can be Preservation or New Creation.

DSHA has defined areas of the State as follows:

- **Distressed** – ‘Racially/Ethnically Concentrated Areas of Poverty’<sup>\*1</sup>, G and H Markets<sup>\*2</sup>, Downtown Development Districts, and isolated Rural Communities. These areas are where sustainable long-term homeownership opportunities should be supported. These are the same areas where development that furthers highly concentrated areas of minorities or poverty should be limited.
- **Stable** – D, E, and F Markets<sup>\*2</sup>. These areas are where a balance of market rate with subsidized housing should be supported.
- **Areas of Opportunity** – A, B, and C Markets<sup>\*2</sup> and/or areas where students are attending schools achieving a proficiency level<sup>\*3</sup> of 90% or higher. These are strong, high value markets where new affordable housing opportunities should be supported.

\*1 - As defined by U.S. Department of Housing and Urban Development

\*2 - As identified in *Delaware Housing Needs Assessment, 2015 – 2020*

\*3 – School Attendance Boundary Information System (SABINS), 2012. Values are percentile ranked and range from 0 to 100. The higher the score, the higher the quality of the school system in a neighborhood.

DSHA maps that include all defined areas are available under Balance Housing Opportunities Maps at the following link: [http://destatehousing.com/Developers/dv\\_lihtc.php](http://destatehousing.com/Developers/dv_lihtc.php)

## **Historic Housing**

Five (5) points will be awarded to developments that are utilizing Historic Tax Credits under Section 47 of the Internal Revenue Code of 1986 and/or State Historic Tax Credits. To qualify for these points, the entire property, including all buildings, must already be on the National Historic Register at the time of application. In addition, the Applicant must obtain a letter from the State Historic Preservation Office that all buildings of the development are eligible and that state credits will be available by conversion. Conversion is defined as the date upon which the loan shall convert to permanent financing, which shall be following the construction period and upon satisfaction of all conditions set forth in the Loan Agreement(s).

## **Preservation**

To further prioritize preservation developments, points will be awarded for each of the following factors up to a maximum of ten (10) points. Each factor listed below must be supported and documented as an attachment in the application.

1. Require hard cost/rehabilitation expenses that exceed \$50,000/unit\* - 4 points.
2. Have committed federal rental assistance contracts - 3 points.
3. Property was placed in service on or before December 31, 1995 - 2 points.
4. Property is a family development - 1 point.

\*All hard/rehabilitation costs will be for the building housing the units and units only. (Must be documented by the Capital Needs Assessment and proposed rehabilitation work must be past its 50% life cycle per DSHA's Construction Standards. (DSHA's Web-Based Application Pro forma Tab – Cost Summary must also be completed). Costs not to be included in the \$50,000/unit, include but are not limited to, all offices, community rooms/buildings, storage areas, maintenance areas, and separate laundry facilities, all exterior work not an integral part of the building or units, all site costs, bonds, and all work not of a standard nature such as installation of awnings or solar panels. The Applicant will not be eligible for points in the Preservation/Rehabilitation Pool if DSHA's Web-based LIHTC application Tab - Cost Summary Buildings and Units section is not completed.

## **Rural Development-USDA/Other Federal Rental Subsidy**

Three (3) points will be awarded to:

- Developments that are in rural areas designated by the USDA Rural Development and have received an award of new USDA rental subsidy; or other developments that have received an award of new federal rental subsidy contract (transfer of existing contracts is not considered new subsidy).
- Demolition/new construction units that have not been in service for at least one year are also eligible for the points in this category (i.e. public housing).

Documentation of the award of the rental assistance/subsidy contract must be included in the application.

## **Capacity of Development and Management Team**

Zero to six (0-6) points will be awarded based on the demonstrated relevant experience and qualifications of the developer and management entity. All team members must be disclosed at time of application. The members of the team, in addition to the developer and management entity, include the applicant/owner, co-developer, consultant, owner, architect, surveyor, real estate and tax counsel. Members of the development and management team must demonstrate experience in the satisfactory development of affordable housing, experience in the management of affordable housing and must have the financial capacity to carry the development through to completion. All members of the development team must provide documentation that services will be provided during all phases of the development. DSHA reserves the right to determine "satisfactory" development experience. Any substitutions of Development Team members from original application or at any time during the construction period must be pre-approved by DSHA.



## **Provision of Social Services**

The provision of social and support services is an integral part of any development to improve the quality of life of the residents of the development. The cost and source of funds to pay for social services must be included in the application. Services must be affordable, appropriate, available, accessible, and the service must be provided to the development's residents in every calendar quarter for a total of 8 hours per year. One (1) point will be awarded for each service up to a maximum of three (3) points. In order to receive the maximum number of points (3), at least three qualifying services must be provided, representing a total of 24 hours of qualified services provided to the development's residents. The services must be distinct to qualify for the points – for example, a series of financial literacy classes, even on different topics such as budgeting/spending plan or understanding your credit/credit counseling would count as one financial literacy class. Services should be actively linked to the residents and not simply provided to the community at large and can be provided on-site or off-site. If services are provided off-site, a memorandum of understanding (MOU) with the off-site service provider (i.e., senior center, service center, etc.) must be submitted with the application. The MOU must stipulate a transportation plan for regularly scheduled trips to the facility and classes, a schedule of classes, attendance proof and record keeping, as well as the narrative described below and any other terms, fees, and conditions of the service provider and applicant.

A Support Service Plan must be completed and submitted with the application. The plan should include the following:

- Applicants must submit a narrative describing the services to be provided, a curriculum for any classes, description of why the services are appropriate for the population, how the services will be publicized and marketed, and expected outcomes and benefits.
- Qualifications of the social service organizations that will be utilized at the property or off-site, including their history, capacity and experience.
- Contracts or commitment letters detailing costs of services from each social service provider must also be attached.

Examples of services include but are not limited to:

- Parenting programs;
- Literacy programs;
- Day care;
- Job training;
- Nutritional services;
- Transportation; and
- Financial literacy and counseling.

DSHA allows for reasonable substitutions of services at DSHA's discretion. Prior to application deadline, Applicants are invited to propose social services in writing in addition to those listed and may, in DSHA's discretion, receive points for them. Failure to provide social services after points are awarded and a carryover agreement is executed or any time during the compliance period will result in a penalty against the Applicant in the subsequent LIHTC application submission. The penalty will be equal to the point(s) awarded that were deemed ineligible.

## **Sites and Neighborhood Standards**

Up to twelve (12) points will be awarded to developments that can demonstrate overall quality of location, access to services and transit, and protection of the environment. Each factor of the sites and neighborhood standards must be supported in the market study by the market study provider.

### **Access to Services**

One (1) point for each service, up to a maximum of seven (7) points will be awarded. For projects located in municipalities and incorporated areas, the services must be within a one-half (1/2) mile radius of the project to be eligible for points. Services should be reasonably walkable. For projects located in unincorporated areas of the State in or in a rural area (as designated by USDA), whether incorporated or unincorporated, including New Castle, Kent, and Sussex Counties, services must be within one and one-half (1 1/2) mile radius of the project for each of the following factors to be eligible to receive the points:

- Supermarket (minimum square foot of 10,000 - with a broad supply of sufficient food to maintain daily food consumption)
- Public schools (family sites only)
- Library
- Licensed child care center (family sites only)
- Senior center (elderly sites only)
- Usable park space
- Bank
- Walk-in medical facility or hospital
- Post office
- Laundry/dry cleaner
- Pharmacy (pharmacy located within a supermarket will only receive one point for supermarket)
- Community, civic or town center, or community recreation center that is accessible to all residents
- Community facilities (place of worship, police or fire station, community gardens, cultural arts facility)

USDA designation area link:

<http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=sfp&NavKey=property@12>

### **Location**

Project is an infill site. (3 points) - A site that has 75 percent of its perimeter bordering existing developed land and has immediate access to existing infrastructure (roads, water, sewer, and other infrastructure. Demonstrate through site map with perimeter measurements; or

Project is contiguous to existing development. (1 point) - A site that has at least 25 percent of the perimeter bordering existing developed land demonstrated through site map with perimeter measurements. The development will utilize existing sewer and water lines without extensions exceeding 1,000 feet.

Note: A *street* or other right-of-way does not constitute developed land; it is the status of property on the other side or right-of-way of the street that matters. Any fraction of the perimeter that borders waterfront other than a stream is excluded from the calculations. Forest, farm land, and other undeveloped parcels surrounding sites do not count as “developed land” – regardless of zoning classification.

### **Protecting Environmental Resources**

Two (2) points may be awarded if the development, including buildings, other structures, roads or other parking areas, on all portions of the site shall **avoid all** of the following (documentation will be verified through the environmental assessment or environmental audit and detailed site map):

- Land within 100 feet of wetlands, including isolated wetlands or streams. Bike and foot paths are allowed if at least 25 feet from the wetlands boundary.
- Land with 100 feet of critical slope area.
- Prime farmland (Zone 4 - State Strategies for Policy and Spending).
- Land that is specifically identified as habitat for any species on federal or state threatened or endangered lists.
- Land with elevation at or below the 100-year floodplain.
- Land or development having current environmental issues (i.e., superfund site, brownfields, greyfields, arsenic or chemical, lead in water, lead-based paint, asbestos, close proximity or adjacent to railroad within 1,000 feet. (Note: 3,000 feet is a noise assessment requirement).
- Land or soil is not suitable for building.

**Note:** When a Development has had environmental issues and the issues have been remediated, documentation of remediation should be included as an exhibit in the application in order to be eligible for points in this category.

## **Energy Conservation Measures**

Two (2) points may be awarded for projects that achieve the Energy Star 3.0 Version, with additional HERS ratings as noted below:

- Energy Star, Version 3.0 -  
[http://www.energystar.gov/index.cfm?c=bldrs\\_lenders\\_raters.nh\\_v3\\_guidelines](http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_v3_guidelines)

In order to receive points utilizing Energy Star, Version 3.0, additional HERS ratings will be required:

New Construction:

- For 100% electric units/buildings\*: HERS Index of 55 or less (without solar PV)
- For units/buildings utilizing gas: HERS Index of 45 or less (without solar PV)

Acquisition/Rehabs:

- For 100% electric dwellings/buildings\*: HERS Index of 65 or less (without solar PV)
- For dwellings/buildings utilizing gas: HERS Index of 55 or less (without solar PV)

DSHA will review the architectural documents submitted with the application exhibits to confirm the existence of the proposed energy amenities and/or requirements this will include an Energy Star, Version 3.0 Plus a certification from the design architect verifying the Energy Star, Version 3.0 system is submitted with the Application. Confirmation from the construction architect is required with the submission and will be verified prior to closing should tax credits be awarded. Verification of the availability of all energy conservation system may be required by DSHA at any time and throughout the development's compliance period.

Failure to provide energy conservation systems after points are awarded and a carryover agreement is executed or any time during the compliance period will result in a penalty against the Applicant in the subsequent LIHTC application submission. The penalty will be equal to the point(s) awarded for this category

## **Access to Transit**

A development may be awarded up to three (1-3) points for including amenities and facilities to accommodate current, planned, or possible fixed route transit service. For each transit category below, points will be awarded when all criteria are met to the satisfaction of the Planning Section within the Delaware Transit Corporation (DTC), providers of DART First State transit services, and DSHA. An early consultation with DTC is strongly recommended to be successful. Application to DTC must be made by **February 26, 2016** with the required information or the applicant will fail to qualify for receiving points in this category.

For applications with more than one non-contiguous project (e.g. two or more USDA Section 515 projects under one application), similar points will be awarded to the applicant if an MOA can be executed for at least one or more of the projects in an application.

For each transit category, the application shall include a DRAFT Memorandum of Agreement (MOA) between the tax credit applicant and DTC stipulating:

- Detailed improvements to be made (determined via consultation with DTC);
- Detailed costs of improvements (provided by applicant's site engineer); and
- Responsibility for maintenance. (Project funds may not be used to maintain transit improvements not located on the site or immediately adjacent to the site).

After an award is made, an executed MOA will be required prior to carryover.

Failure to provide transit amenities after points are awarded and a carryover agreement is executed, or any time during the compliance period, will result in a penalty against the Applicant in the subsequent LIHTC application submission. The penalty will be equal to the point(s) awarded that were deemed ineligible.

Off-site improvements may not be part of the project costs, unless the costs are closely associated with the project and have been clearly written and described in the MOA and receive DSHA approval. No costs associated with a transit stop associated with other state agencies or municipalities may be included in project costs.

Projects that cannot fulfill their MOA, for reasons beyond their control, may not transfer budgeted transit costs to DTC or any other agency or transfer costs to other development cost line items.

DSHA maps that include all transit areas are available under Transit Maps at the following link:

<http://delaware.maps.arcgis.com/apps/Viewer/index.html?appid=8bab9ecd370a413191573fe26491c2be>

#### **Transit Categories: Existing Transit and Transit Ready**

The purpose of both categories is to encourage the location of sites in immediate proximity of existing transit service and include amenities and facilities to accommodate current or planned fixed route transit service. A site will be deemed *Existing Transit* or *Transit Ready* where the following **base requirements** are met:

- A **designated point of pedestrian site ingress and egress** is located within DTC's currently defined Transit Service Area (see map), or;
- DTC has expressly confirmed its intention to propose **direct service** to the site subject to its service development planning process (**Note:** The agency proposes Service Area adjustments to the public via biannual Service Changes and/or mid-range fiscal year Service and Business plans.), and;
- The designated point of pedestrian site ingress and egress is connected to an internal ADA compliant sidewalk network.

#### **Existing Transit – (1 point)**

A site will be considered *Existing Transit* if, in addition to the base requirements, the property will be directly served by transit by an existing bus stop located within immediate walking distance (700 ft. maximum).



**Transit Ready – (3 points)**

A site will be considered *Transit-Ready* if, in addition to the base requirements, DTC and the developer have agreed that the property will be directly served by transit, subject to the service development planning process. Direct service may be construed by DTC to mean the installation of a bus stop within the site or along the property frontage. In some instances, this determination can be satisfied when DTC agrees to add or relocate a bus stop within immediate walking distance (700 ft. maximum) of the site's pedestrian access point.

*Transit-Ready* properties will include some of the following amenities and facilities, determined by DTC, installed and maintained at the developer's expense, and in compliance with DTC standards:

- Bus pull-offs (poured curb or striped in road shoulder)
- Pavement requirements (where applicable)
- Bus stop waiting pads
- Shelter pad only installations (future shelter install)
- Bench pad only installations (future bench install)
- Shelter and pad
- Bench and pad
- Trash Receptacles
- On-site fare card outlet or distribution (where applicable)

**Please provide the following information to DTC with your request for a MOA by February 26, 2016:**

- General map showing the location of your proposed development in relation to the City or State Map in Delaware;
- General site plan depicting the building locations both current and proposed;
- *Detailed site or construction plan* depicting the proposed location for the transit improvement(s) per the *Access to Transit* submission through DSHA;
- Cost of improvements (provided by the applicant's site engineer (or other qualified cost professional); and
- Copy of Certificate of Liability Insurance.

*Delaware Transit Contact Information:*

*David Dooley*

*Senior Service Development Planner*

*Delaware Transit Corporation/DelDOT*

*119 Lower Beech Street, Suite 100*

*Wilmington, DE 19805-4440*

*P: (302) 576-6064*

*E: [david.dooley@state.de.us](mailto:david.dooley@state.de.us)*

## **Community Compatibility – (New Housing Creation Only)**

Up to ten (10) points will be awarded to developments that can demonstrate overall community design and connectivity to surrounding communities. Each factor of the community compatibility should be demonstrated through the site plan, market study, and other applicable documents.

### **Community Design**

While design of the development need not be at an advanced stage, the conceptual design should reflect compatibility with surrounding community and enhancement of the visual character of surrounding area as well as foster creativity. Two (2) points each, up to a maximum of eight (8) points may be awarded for the following:

- The project's design is consistent with the architecture/character of the local area, or the project's visual character respects and makes a positive contribution to the surrounding community.
- Aesthetic amenities, such as trim, materials, and color enhances the exterior quality and interest of the project.
- Detail to design and planning, including full height brick, stone, articulations in the facades, bay windows, detail at the eaves and cornices.
- New and existing setbacks are consistent with surrounding development.
- Building heights and bulk, as seen from the street, should be respected. The building should not look strange or out of place in the community where it is located.
- Developments should have a variety of bedroom sizes that include one, two and/or three bedrooms. A mix of bedroom size promotes opportunities for various household sizes in a community.

Conversion projects should adhere to the above criteria to maintain the existing character of the surrounding neighborhood. In addition, innovative upgrades that considerably enhance the visual appeal of the existing building and site are expected to qualify in this category. Examples of upgrades to the project's design include, but are not limited to, the following:

- Landscaping in excess of community requirements;
- Roof pitches where they can complement surrounding flat roofs;
- Color schemes that highlight architectural details such as rosettes, dentils, and trim in contrasting colors for historic buildings;
- Sidewalk coverings, such as: canopies over entries; freestanding awnings; and building-supported awnings that can be applied in a manner to enhance the visual appeal of the building; and
- Minimize the impact of parking spaces by placing them to the rear of the building where possible or incorporating decorative elements or landscaping elements to soften the visual impact.
- To the extent possible, developments with a variety of bedroom sizes that include one, two and/or three bedrooms. A mix of bedroom size promotes opportunities for various household sizes in communities.

## **Connectivity to Surrounding Communities**

The project is designed to relate to and encourage connectivity with the surrounding community and not create an isolated enclave. Two (2) points may be awarded if the project demonstrates through a sitemap, that sidewalks and other all-weather pathways are independent of the street or highway edge and connect to adjoining neighborhoods or other trail systems. Unimproved dirt pathways and pathways covered with organic materials such as bark or mulch do not qualify as “all-weather” pathway. Porous pavement, to reduce water runoff, should be considered.

Failure to provide the compatibility in design and connectivity to surrounding communities after points are awarded and a carryover agreement is executed will result in a penalty against the Applicant in the subsequent LIHTC application submission. The penalty will be equal to the point(s) awarded that were deemed ineligible.

Technical assistance on how to achieve points for connectivity is available from the Delaware Department of Transportation (Del DOT). Please contact:

Marc Coté  
Assistant Director - Development Coordination  
P.O. Box 778  
Dover, DE 19903  
Phone (302) 760-2266  
Fax (302) 739-2251

[Marc.Cote@state.de.us](mailto:Marc.Cote@state.de.us)

- Requests for technical assistance must be made to Del DOT by **March 15, 2016**.

## **Development and Unit Amenities**

All units must meet Minimum Construction Standards established by DSHA. A maximum of five (5) points will be awarded to those developments that exceed the minimum standards. Eligibility of points will be based upon 100% of all units benefiting from such amenities. One (1) point will be awarded for each - new amenity provided up to five (5) points, provided that such amenities affect 100% of the units. These include but are not limited to:

- On site community center: The community center should be of sufficient size to accommodate the residents and services (if provided). The community center should contain at least 15 net square feet per unit and at a minimum 750 square feet in size. The square footage should be in addition to the kitchen or kitchenette, if provided; the community center shall include a computer/business center equipped with computers, printers and other technology for resident’s access (separate points will not be awarded for computer and/or business centers);
- Security/Surveillance System: Expanded system will be tied into the monitoring system of the local police department. (Documentation from police department should be submitted as an attachment in the application).
- Private Outdoor space: The space shall be directly associated with each dwelling unit, may occur as an entrance way (porch, fenced in area), an outdoor patio or play area or other definable space; Access shall be from the interior and limited for use by the tenant only. Grade level space shall have perimeter enclosure by material suitable for installation, i.e., fence or railings. Second floor space shall comply with all applicable building codes for life safety.

- Exercise and/or walking trails with permanent surface;
- Eat-in kitchens. Room shall be sized to accommodate a table and chairs for the number of occupants within the unit;
- Ceiling fans, Energy Star compliant, for all bedrooms and living room areas. One point will be given no matter how many fans are in the unit;
- Microwave or micro-hood combination – must be Energy Star compliant;
- Trash chutes (for mid or high rise facilities);
- WIFI for all units – Note: initial installation and equipment must be part of the project’s base construction costs. The monthly fee can be paid by operations;
- Washer/Dryers units in elderly units;
- For elderly properties, regular (at least 3 times a week), site-provided bus service for residents for shopping, appointments, etc. and;
- All Non-Smoking Buildings and Units. The non-smoking policy will prohibit tobacco products in all units, indoor common areas in and other administrative office buildings of the development, including the maintenance buildings/offices. Smoke-free policies must extend to all outdoor areas up to 25 feet from all housing buildings/units and administrative office buildings.

Prior to application deadline, Applicants are invited to propose amenities in writing, in addition to those listed and may, in DSHA’s discretion, receive points for them. The development and unit amenities must be supported and documented in a chart format as part of the Market Study requirements (see QAP Attachments).

Failure to provide amenities after points are awarded and a carryover agreement is executed or any time during the compliance period will result in a penalty against the Applicant in the subsequent LIHTC application submission. The penalty will be equal to the point(s) awarded that were deemed ineligible

### **Community Revitalization Plan**

Two (2) points will be awarded if the development and/or physical location are clearly identified and are included in an approved Community Revitalization Plan or Redevelopment Plan. The plan must also be recent to the proposed development and community and certified by the agency that developed the plan. A certification from the municipality that the development is in the most recently approved Community Revitalization Plan must be submitted, citing page and number, which said page and number must be attached to the certification. See the form of certification included in the QAP Attachments. Letters of support and/or resolutions will NOT be considered under this category. Plans cannot be older than 5 years.

### **Qualified Census Tract**

One (1) point will be awarded to developments where all buildings and parcels are located within a HUD identified Qualified Census Tract.

### **Downtown Development District – (New Housing Creation only)**

One (1) point will be awarded to developments where all buildings and parcels are located within a certified Downtown Development District.

## GENERAL INFORMATION

In point scoring categories, where points are based on calculations (i.e. unit cost reduction, leveraging, et al), DSHA will round up calculation results to the nearest whole number.

If DSHA determines that an applicant received a preliminary reservation of credits and failed to fulfill representations made in applications or in the carryover allocation, DSHA will impose a penalty against the Applicant in the subsequent LIHTC application submission. The penalty will be equal to the point(s) awarded that were deemed ineligible.

Before such action is taken, DSHA will notify the Applicant of the needed corrective action. If the Applicant has not submitted written corrective action acceptable to DSHA, the Applicant will have points deducted in its/their subsequent application equal to the amount of points deemed ineligible in the previous application.

**Point System for all Sponsors**  
**An Application Must Score a Minimum of Sixty-five (65) Points**  
**for an Award of Credits**

### **TIEBREAKERS**

Applications that meet the minimum threshold requirements shall receive points based on the point system for the particular pool in which they compete. In the event of a tie score, applications shall be ranked according to the tiebreaker system. For applications with a tie score, applications that win the tiebreakers with preliminary reservations first going to developments in the set-aside.

The following tiebreaker system shall be used to break ties between applications with the same score.

- a. If competing developments within a given pool have a tie score, a tax credit preliminary reservation shall be awarded to the application with the lowest amount of low-income housing tax credits (unadjusted for the 130 percent QCT) per low-income bedroom.
- b. If there is still a tie score after the first tiebreaker, the tax credit preliminary reservation shall be awarded to the application with a lower total development cost per bedroom.
- c. Where there is a circumstance in which applications of different types (subsidized v. non-subsidized) are competing within the same pool, the score of each may be scaled as necessary to provide an equitable comparison among the applications.

## APPLICATION PROCESS

An applicant may apply for Credits for the current year only. The deadline for submission of each cycle is disclosed on the cover page of the application package.

Applications must be submitted to the DELAWARE STATE HOUSING AUTHORITY, 18 The Green, Dover, Delaware 19901, **no later than 3:00 p.m. on April 29, 2016**. Late submissions will not be accepted. One written complete copy of the LIHTC Web-Based application with all attachments/exhibits and one electronic CD application must be submitted. All paper applications must have original signatures. For the CD scanned application, the CD should be labeled with the Project Name. A Table of Contents should list the web-based Application and each Exhibit Number and Name of Exhibit. **The Exhibits should be scanned as separate files and labeled accordingly.**

Only complete application packages will be considered for an allocation of Low Income Housing Tax Credits. Incomplete packages will be returned to the applicant and the application will not be eligible to compete for tax credits in the current round.

The Application package contains all forms and instructions. The Application Checklist provides a complete list of attachments, which are to be appropriately labeled and submitted with the application forms. All documents are required, even if applicants have submitted similar documents to DSHA in the past (i.e. financial statements). Exhibits and questions that do not pertain to a particular development should be noted as such.

The applicant must complete all applicable questions and supply all documents that are requested in the application package. All questions seeking clarification or interpretation of the Qualification Allocation Plan must be submitted in writing to DSHA for clarification prior to application submission no later than fifteen (15) days prior to the submission deadline date.

The Application should be comprehensive in addressing all information necessary for a responsible funding decision. Upon the application meeting minimum threshold requirements, DSHA reserves the right to request additional information during the review process should it be deemed necessary. Any such information requested and/or provided, shall be considered part of the Application and shall be subject to the above acknowledgments, agreements and waivers.

No application for credits will be accepted for any building or property that has previously claimed credits and is still subject to the initial compliance period for such credits after the year such building is placed in service. This also includes all developments which tax-exempt bonds of DSHA or an issuer other than DSHA, have been issued that are still subject to the initial compliance period.

## **CURE PERIOD**

DSHA retains the absolute right to determine that an application is substantially incomplete and ineligible for further review. DSHA may also choose to allow for the immediate correction of minor/immaterial defects in an application. Should DSHA choose to allow immediate correction, applicants shall be given 48 hours from the time of DSHA notification to cure defects with their application, except for applications that DSHA deems to be substantially incomplete. Examples of items that DSHA may consider as “curable” are further described below:

1. If the applicant has failed to include a required document, the applicant may supply the document; provided, however, that the document existed on the application deadline date and, if the document is a legal agreement or instrument, the document was legally effective on the application deadline date.
2. If statements or items in the application are contradictory or mutually inconsistent, the applicant may present information resolving the contradiction or inconsistency; provided, however, that the information accurately reflects the state of affairs on the application deadline date.
3. The applicant may provide any required signature that has been omitted, except for applications that DSHA deems to be substantially incomplete.

DSHA shall notify the applicant of any curable defects it discovers by telephone, and, simultaneously, in writing electronically (e-mail). The applicant's corrective submission shall not be considered unless it is received by DSHA no later than 48 hours (excluding weekends and legal holidays) from the applicant's receipt of the notification from DSHA. If an applicant cures one or more defects in the manner set forth above, DSHA will deduct one point for each ranking category defect cured from the project's score in determining its ranking in the application cycle.

If an applicant fails to respond to DSHA's notification of curable defects within the 48-hour cure period, or if an applicant's response is non-responsive to the question asked, a negative conclusion shall be drawn. Failure to respond to an item in a cure notification will result in the denial of points in that category or the application may be deemed to not meet threshold.

After the application deadline, telephone calls or other oral or written communications on behalf of a tax credit applicant (for example, from a project's development team, elected representatives, etc.) other than information submitted pursuant to the above shall not be accepted or considered before preliminary reservation awards have been announced.

DSHA shall determine whether any defect in an application is minor or immaterial. Further, if DSHA allows, an applicant to cure certain minor/immaterial defects that does not constitute approval or acceptance of the application in any respect, and is not an assurance that the application will, upon complete review, be deemed acceptable or in compliance with the QAP or DSHA policy.

## THE DELAWARE FREEDOM OF INFORMATION ACT

By submitting this Application, the applicant acknowledges and agrees that the Application, including any market study, shall be deemed a “public record” for the purposes of the Delaware Freedom of Information Act (“FOIA”), codified at 29 Del. C. §§ 10001 - 10005. If information included in an Application is exempt from disclosure as trade secrets or commercial or financial information of a privileged or confidential nature, DSHA will protect such information from disclosure to the extent permitted by § 10002(g)(2) of FOIA. DSHA shall determine in its discretion whether Application material is exempt from disclosure as a trade secret or confidential or proprietary information. Applicant acknowledges and agrees that any portion of the Application which is determined by DSHA to not constitute confidential financial or trade secret information exempt from disclosure under FOIA shall be subject to public examination and copying.

It is the policy of DSHA to not release to any third party any Application materials until after the ranking of projects and allocation of credits has been announced. DSHA expressly reserves its authority to withhold all such information from third party requests pending the completion of the ranking process, to the extent permitted by FOIA. DSHA will endeavor to respond to FOIA requests for application materials as promptly as possible, and absent unusual circumstances, will release to any requesting party public documents related to application materials within fifteen (15) business days of a written request. Any requests should be directed to [FOIACoordinator@destatehousing.com](mailto:FOIACoordinator@destatehousing.com).



## **REVIEW AND SELECTION PROCESS**

Only developments that meet all federal and state program requirements and meet minimum threshold requirements will be reviewed for Credits.

DSHA will notify, via certified mail, the chief executive officer having jurisdiction over the location of any application meeting the minimum threshold eligibility requirements. Such notices will indicate that the applicant has met the minimum threshold requirements under the Plan and generally explain the process for reviewing applications for the possible awarding of tax credits.

DSHA will score the developments strictly in accordance with the Qualified Allocation Plan and taking into consideration any penalty points imposed from previous application(s). Prior to making allocations in accordance with rankings pursuant to the QAP for the current year, DSHA shall allocate Credits to developments which (i) received Forward Reservations of Credits in previous years and (ii) in the determination of DSHA, have met any conditions to such Forward Reservations and are ready to receive an allocation of Credits.

In accordance with federal requirements, a determination that the Credits allocated to a development do not exceed the amount DSHA finds necessary for the financial feasibility of the development and its viability as a qualified low-income housing development will be made again at the time of allocation and at the time the development is placed in service.

A development cannot be allocated Credits in an amount that exceeds the amount necessary to make the development feasible. Therefore, the amount of Credit allocated to the development may change from initial Credit preliminary reservation.

### **Preliminary ranking notifications, appeals and unused credits**

Based on the rankings, threshold eligibility review, and needs analysis, DSHA shall make preliminary reservation award recommendations to the Director of Delaware State Housing Authority. An applicant may appeal DSHA's ranking decision by submitting a written request for reconsideration to the Director of DSHA no later than 15 days from the date of the announcement of the ranking of applications. The request must include a comprehensive discussion of the basis for the reconsideration. Such requests will be considered promptly by the Director and the decision of the Director shall constitute final agency action. In the absence of a request for reconsideration, the date of the ranking announcement shall constitute the date of final agency action. The Director shall review the rankings, eligibility and tiebreaker decisions. DSHA decisions are final.

Within 90 days of application deadline and submission, DSHA will notify sponsors in writing whether or not they received a preliminary reservation and the basis of the decision. The preliminary reservation letter will enumerate the maximum amount of Credit available to the development as well as the conditions that will be required for the final allocation of Credits.

Any unused credits will be provided to the highest-ranking project that requires the least amount of credits. DSHA may reserve credits to the next highest ranked project as a result of returned credits from a previous allocation year or withdrawal or disqualification of a higher ranked project. A Development which does not initially appear to rank high enough for a preliminary reservation of Tax Credits but is subsequently considered for a preliminary reservation as a result of the above will be given a new timetable in order to allow reasonable time to obtain the necessary financial commitments and/or documentation required by DSHA before making an carryover allocation of Credits.

## FORWARD COMMITMENTS

DSHA reserves the right, at its sole discretion, to reserve a portion of its Credits for a year subsequent to the current year to a highly ranked development that received only partial funding in the current year due solely to limited Credit availability. DSHA's determination to reserve will be based on the amount of Credits needed to demonstrate financial workability, readiness to proceed and other considerations deemed appropriate. The amount actually allocated in the subsequent year may be less than the amount reserved depending on DSHA's determination regarding the financial feasibility of the development. DSHA shall only make forward commitments from the following year's allocation and not in an amount greater than the balance of the credits available in the current year, after the highest ranked projects have received their full compliments of credits.

DSHA's Director reserves the right to amend the Forward Reservations requirements at his/her sole discretion. **(Also see Non-Compliance with Placed In Service Date further information).**

## **PLACED IN SERVICE REQUIREMENTS**

### **Placed In Service**

All developments receiving an allocation of Credits must be placed in service either by November 1st of the year in which they receive Credits or have incurred more than 10% of eligible development costs, no more than twelve months after the issuance of the carryover allocation. Federal law requires developments receiving an allocation made prior to the year in which the building is placed in service to (1) have more than 10% of the reasonably anticipated costs of the development incurred by the later of (i) the end of the calendar year in which the allocation is made or (ii) twelve months from the date of the allocation; and (2) be placed in service by the end of the second calendar year following the year of allocation.

Owners must provide a written certification to DSHA from a certified public accountant that the owner has incurred by the close of the calendar year of the allocation or twelve months from the date of the carryover allocation, expenditures for more than 10% of the reasonably expected basis of the development. Developments, not adhering to this procedure or not meeting the above criteria will be subject to having their Credit allocation revoked.

### **DSHA Placed In Service Requirement**

In addition, applicants, owners and/or any related entities, as determined by DSHA that received a preliminary reservation and/or a Carryover Allocation of 2015 Credits and have not met the 10% test, as required by DSHA, by the 2016 Tax Credit application submission deadline are ineligible to make application for 2016 Tax Credits.

### **Carryover Agreement Requirements**

To qualify for an Allocation Carryover Agreement, owners must provide, the carryover agreement execution date, or at construction closing, proof of ownership of the property by certifying in writing, under penalty of perjury, that they own the property and attach either a copy of the recorded deed or the owner's title insurance policy. If a copy of the recorded deed is not available in time, the owner may provide a copy of the settlement statement evidencing purchase of the site(s) along with a copy of the executed deed(s) and recorder's receipt.

At the time the Allocation Carryover Agreement is executed, the owner must elect whether, pursuant to Section 42(b)(2)(A)(ii)(I) of the Code, to fix the applicable acquisition Credit percentage rate for each building in the development as the percentage prescribed by the Secretary of the Treasury for the month of the Carryover Agreement (if acquisition credits will be taken). The owner may request that DSHA assign portions of the allocation to individual buildings upon execution of the Agreement or request that DSHA assign portions of the allocation to specific buildings within the development no later than the close of the calendar year in which the buildings are placed in service.

Carryover Agreements will be required by DSHA prior to the end of the credit year that applicants receive the preliminary reservation. DSHA will generate the document and contact the applicant for execution of the carryover agreement date at DSHA's discretion.

The applicable federal rate may be locked in to the current monthly applicable federal rate at the time of carryover allocation by election under Code Section 42(b)(2)(A)(ii).

### **Non-Compliance with Placed In Service Date – Forward Reservation**

1. DSHA, within its sole discretion, reserves the right, based upon written documentation submitted by the Applicant, to make a determination that the failure to place a development in service is due to circumstances beyond the applicant's control.
2. Such written documentation must:
  - a. Be submitted in writing within thirty (30) days of such applicant's knowledge of the delay, via certified mail to: DSHA, 18 The Green, Dover, DE 19901; and
  - b. State the name of the development, the name of the Applicant, and the deadline pursuant to the Code for placing the development in service; and
  - c. Provide an explanation, supported by appropriate evidence, of (i) the due diligence performed by the Applicant in attempting to meet the deadline, (ii) the specific circumstances causing the delay, (iii) the attempted remedial measures taken by the Applicant in order to mitigate the delay, and (iv) any other pertinent information.
3. Notwithstanding any other restrictions in the "Forward Reservations" this section, or other sections of the QAP, upon such determination by DSHA that the circumstances, are in fact, beyond the Applicant's control, DSHA may allow the development, having previously been evaluated, reserved and/or allocated credits (but being unable to be placed in service within the applicable time limit), to return such credits without penalty imposed by DSHA and to be given a forward reservation in the allocation of the same amount of credits (as those returned to DSHA) within the next two calendar years after the return of the credits.
4. Any such priority will be conditioned upon:
  - a. A determination by DSHA that the development continues to be desirable in terms of meeting affordable housing needs;
  - b. The Applicant's early return of any previously allocated credits; and
  - c. Such other terms as are deemed appropriate under the circumstances by DSHA in its sole discretion.
  - d. Requests for Forward Reservations will require a fee of 1½% carryover/allocation amount up to \$15,000. The fee will be non-refundable, non-basis eligible and must be paid prior to execution of the Forward Reservation.
5. Anything in the preceding section on Forward Reservations to the contrary notwithstanding, DSHA shall be authorized to make forward reservations of tax credit authority in order to encourage the Applicants of any such developments to return the credits within the year that it is determined that the Applicant will not be able to place the development in service, while awaiting the allocation from the next year.
6. The return of credits pursuant to this subsection will only be allowed one time and the development and Applicant must comply with the current Qualified Allocation Plan (QAP) in place at the time of re-application. The Applicant will be required to complete a new application and may be subject to revise certain exhibits at DSHA's discretion.

### **Cost Certification**

The final Credit allocation will take place at the time the development is placed in service and DSHA has received cost certification by the owner (mortgagor) and the general contractor of the development. A cost certification guide will be provided by DSHA for use by the developer and general contractor in submitting all information. The cost certification for the development must include all sources and uses of funds including all syndication fees. The final cost certification will be due 90 days after DSHA issues the "Permission to Occupy" approval(s) on the last building and must include all sources and uses, including all syndicator fees. If the final cost certification is submitted after the deadline date a \$5,000 penalty fee plus an additional \$500 penalty fee for each additional week that the cost certification remains outstanding will be assessed to the Applicant. The penalty fee cannot be paid from loan(s), equity proceeds, or the project's operations. All cost certification forms are located at the following link: [http://www.destatehousing.com/Developers/developermmedia/cost\\_cert\\_guide.pdf](http://www.destatehousing.com/Developers/developermmedia/cost_cert_guide.pdf)

### **Extended Use Agreement**

All applicants must agree to a minimum thirty-year low-income housing commitment for the development. The extended use agreement must reflect any additional compliance period committed to at time of application. The Declaration of Restrictive Covenants must be signed, recorded and returned to DSHA before the carryover allocation is awarded or the development is placed in service.

Also at such time, the Owner will need to determine if it will elect to fix the applicable Credit percentage for acquisition credits on each building in the development as the percentage(s) prescribed by the Secretary of the Treasury for the month the Carryover Allocation Agreement is executed or, alternatively, use the applicable percentage for the month in which the particular building is placed in service.

DSHA reserves the right to require certain conditions to be met before making the final Credit allocation. These requirements will be itemized in the Preliminary Reservation and/or Carryover Agreement. Should any of the requirements listed in this document not be met or the characteristics of the development be changed or modified at any time after receiving the Carryover Allocation Agreement, the owner agrees DSHA shall have the right to cancel the Credit allocation and the owner shall acknowledge the return in full of the Credit allocation to DSHA.

DSHA is not making any representation or warranty that the amount of Credit allocated is sufficient to make a development feasible or viable or that the development has complied or will comply with any particular requirement of the IRC.

## COMPLIANCE MONITORING PROCEDURE

DSHA has implemented monitoring regulations for the LIHTC program as required by the IRS. DSHA will monitor all LIHTC projects for compliance with 1) minimum low-income set aside requirements, 2) rent limitations, 3) tenant income requirements, 4) recordkeeping requirements, and 5) annual project certification requirements.

DSHA will perform annual on-site inspections of at least twenty percent (20%) of all LIHTC developments, including RHS Section 515 and tax-exempt bond financed properties.

DSHA will conduct on-site inspections of all the buildings in the development by the end of the second calendar year following the year the last building in the development is placed in service and, for at least 20% of the development's low-income housing units, inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for the tenants in those units.

In addition, at least once every three years, DSHA will conduct on-site inspections of all the buildings in each low-income housing development and, for at least 20% of the development's low-income units, inspect the units, the low-income certifications, the documentation the owner has received to support the certifications, and the rent record for the tenants in those units. DSHA will determine which low-income housing developments will be reviewed in a particular year and which tenants' records are to be inspected.

DSHA may request an owner of a low-income housing development, not selected for the review in a particular year, to submit to DSHA for compliance review and annual compliance reporting, documents which will include, but are not limited to, the following information; copies of the annual income certifications, documentation that the owner has received to support those certifications, and the rent record for each low-income tenant of the low-income units in their development.

All low-income housing developments may be subject to review at any time during the compliance period.

DSHA has the right to perform an on-site inspection of any low-income housing development through the end of the compliance period of the development. Each owner of a development receiving credits must permit the performance of DSHA inspections. The owner of a low-income housing development should notify DSHA when the development is placed in service. DSHA reserves the right to inspect the property prior to issuing IRS Form 8609 to verify that the development conforms to the representations made in the Application. DSHA also requires all owners to use DSHA's MITAS integral database system for providing all required tax credit data.

DSHA is required to annually report to the United States Department of Housing and Urban Development (HUD) all resident and project data for all tax credit projects that are being monitored by DSHA. DSHA will report annually the data to HUD in a format established by HUD. HUD Tenant Data Collection requires each state Credit allocating agency to provide HUD with information on the race, ethnicity, family composition, age, and income, use of federal rental assistance, disability status, and monthly rental payments of households residing in each property receiving Tax Credits. All developments receiving Tax Credits must participate in this data collection effort and will be expected to provide the required information to DSHA and HUD.

LIHTC regulations are effective as of January 1, 1992, however, if DSHA becomes aware of noncompliance that occurred before that date, DSHA is required to notify the IRS of noncompliance. These regulations are subject to change at any time to comply with Federal regulations.

### **Minimum Low Income Set Aside**

The minimum criteria for low-income set-asides are as follows:

- a. Twenty percent (20%) of the residential units in a project shall be both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of the area median gross income, or
- b. Forty percent (40%) of the residential units in a project shall be both rent-restricted and occupied by individuals whose income is sixty percent (60%) or less of the area median gross income.

The owner may select either (A) or (B) as a minimum set-aside or a greater percentage, up to one hundred percent. The election is made at the time of application and must be maintained throughout the compliance and extended use periods.

### **Rent Limitations**

LIHTC units are rent-restricted. The maximum rent that can be charged for a low-income unit cannot exceed thirty percent (30%) of the imputed income limitation applicable to such unit (See - Rent Limits By Number of Bedrooms chart).

### **Income Requirement**

The maximum income requirement is fifty percent (50%) or less of the county gross median income based on family size or sixty percent (60%) or less of the county gross median income based on family size. The owner elects the income limit percentage to be used at the time of application. The allowable incomes based on family size can be found in the Income Limits chart. The owner must keep on file verification of the tenant's income.

The owner must retain on file DSHA's Annual Tenant Income Certification Form, documentation/verification to support all income sources, and a copy of the lease for each unit of the project. The form includes the following information:

- a. Tenant name, social security identification numbers
- b. Family dependents and ages
- c. Gross income and asset information
- d. Sources of income
- e. Full-time student status

The form must be signed by the tenant and accepted by the owner. By signing this document, the tenant is certifying that the information is true and correct. Certain owners of 100 percent qualified low income properties may not have to perform an annual recertification of the tenant's income; however, owners may have to provide such certifications for various funding programs. In addition, data collection and submission requirements will still be applicable.

DSHA reserves the right to request this information at any time throughout the compliance or extended use period, whichever is longer. Please see DSHA's Compliance Monitoring Manual for proper documentation and certification procedures.

### **Recordkeeping Requirements**

As required by the IRS, all LIHTC projects must maintain and have available for inspection the following information on each building in the project for each year in the compliance period:

- 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 the source and amount of any utility allowance calculations);
- d. The low-income unit vacancies in the building(s) and information that shows when and to whom the next available unit(s) was rented;
- e. The number of occupants in each low-income unit;
- f. The annual income certification of each low-income tenant per unit;
- g. Documentation to support each low-income tenant's income certification;
- h. The eligible basis and qualified basis of the building(s) at the end of the first year of the Credit period, IRS Form #8609 and all attachments;
- i. A list of all tenants of the building(s) at initial rent-up which includes the following: name of occupant, number of persons, and annual income;
- j. The character and use of the non-residential portion(s) of the building included in the building's eligible basis under 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).
- k. Documentation that the owner has not refused to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 or any State of Delaware rental assistance program;
- l. Documentation that the buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice to the annual certification submitted to DSHA. In addition, the owner must state whether the violation has been corrected;
- m. No findings of discrimination under the Fair Housing Act, 42 U.S.C. §§ 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 C.F.R. § 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. § 3616(a)(1), or an adverse judgment from a federal court.



- n. If a property receives funding from the following sources; HOME funds, Housing Payment Assistance contract (HAP), Housing Development Funds (HDF), or the Low Income Housing Tax Credits (LIHTC) were allocated in 2002 to present, an Affirmative Fair Housing Marketing Plan (AFHMP) must be reviewed and approved by either DSHA or HUD. This plan must be updated every 5 years.

The records (listed above) for the first year of the Credit period must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building. The records for each year thereafter must be retained for at least 6 years after the due date (with extensions) for filing of the federal income tax return for that year.

### **Annual Project Certification and Review**

The owner must annually certify to DSHA that, for the preceding 12-month period, the project has achieved the following requirements:

- a. The project met the required minimum set-aside or any higher set aside elected by the owner;
- b. There was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project or that there was a change, and a description of the change;
- c. The owner has received an annual income certification from each low-income tenant and documentation to support that certification;
- d. Each low-income unit in the project was rent-restricted under Section 42(g)(2);
- e. All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless, provided under 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 (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of violation for any building or low income unit in the project.
- g. There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or that there was a change, and the nature of the change (e.g. a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);
- h. All tenant facilities included in the eligible basis under Section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were 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 will be rented to tenants not having a qualifying income;
- j. If the income of tenants of a low-income unit in the project increases above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income.
- k. If a household consists of ALL full-time students, such households met one of the exceptions outlined in Section 42 (i)(3)(D) which prohibits households occupied entirely by full-time students in a low-income tax credit unit;

- l. The owner has not refused to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 or any State of Delaware rental assistance program;
- m. No findings of discrimination under the Fair Housing Act, U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616(a)(1), or an adverse judgment from a federal court; and
- n. An Extended Low-Income Housing Commitment, as described in Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989) (e.g. Declaration of Land Use Restrictive Covenants relating to Low-Income Housing Tax Credits is in effect and was recorded with the Recorder of Deeds in the applicable county).

The owner must certify the above under penalty of perjury. In addition, it is a state crime punishable by fine of up to \$2,300 or up to 1 year in prison or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 11, Delaware Code, Section 1233.

The Annual Project Certification form needs to be completed by the owner annually and forwarded to DSHA at 18 The Green, Dover, Delaware 19901 to the Attention of Tricia Conley, by January 15 of each year.

DSHA shall review the Annual Project Certifications submitted as required above for compliance with the requirements of Section 42. In addition, as set forth on page 1 hereof, DSHA shall inspect at least 20% of low-income housing projects annually and shall inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in at least 20% of the low-income units in those projects.

DSHA shall determine which tenants' records are to be inspected or submitted by the owners for review. Furthermore, in connection with the inspection described in the preceding paragraph, the records to be inspected shall be chosen in a manner that will not give owners of low-income housing projects advance notice that their records for a particular year will or will not be inspected. However, DSHA may give an owner reasonable notice that an inspection will occur so that the owner may assemble records (for example, 30 days' notice of inspection).

The certifications and reviews described in this section shall be made at least annually covering each year of the applicable 15-year compliance period.

### **Annual Site Inspection**

DSHA shall have the right to perform an on-site inspection of any low-income housing project through the end of the compliance period or the extended use period, whichever is longer, of the buildings in the project. Through an on-site visit, DSHA will annually perform an inspection of the owner's record-keeping for compliance with 1) minimum low-income set aside requirements, 2) rent limitations, 3) tenant income requirements, 4) record keeping requirements, 5) annual project certification 6) physical inspection of at least 20% of the units reviewed, and 7) all extended use restrictions/agreements. DSHA also reserves the right to perform a general physical inspection of the building(s), if it is deemed necessary. The owner must make available all the information required by DSHA to perform its inspection during normal business hours for the entire compliance period or until the end of the extended use period, whichever is longer.

### **Notice to Owner**

DSHA shall provide prompt written notice to the owner of a low-income housing project if DSHA does not receive the Annual Project Certification, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described above, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42.

### **Notice to Internal Revenue Service**

DSHA is required to file Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance" with the IRS no later than 45 days after the end of the correction period specified in the written notice to the owner and no earlier than the end of the correction period (whether or not the noncompliance or failure to certify is corrected.) DSHA must explain the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the situation. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualifying basis is an event of noncompliance.

### **Correction Period**

Should DSHA find a project to be in noncompliance with Section 42 of the Code, the owner must supply any missing certifications, correct any findings, and bring the project into compliance with the provisions of Section 42 within 60 days of the date of DSHA notification to correct the violation, unless extended by DSHA in writing.

### **Compliance Monitoring Fee**

DSHA will charge a monitoring fee on Tax Credit eligible units for performing the service of monitoring the LIHTC project. For new projects, DSHA will charge \$600 per unit. This fee must be paid prior to receiving an allocation of Tax Credits; at the issuance of IRS form 8609 or the Carryover Agreement, whichever is issued first. For all projects allocated credits after January 1, 1990 through December 31, 1996, the annual fee will be \$15 per unit and will be due January 15 each year for the remaining years of the compliance period. An annual fee of \$15 per unit fee will also be due as long as DSHA has LIHTC monitoring responsibility (after the initial 15 year compliance period has expired and during the second 15 year extended use period) for all properties under the LIHTC program.

### **Compliance Monitoring Manual**

DSHA has developed a "Compliance Monitoring Manual" to be used as a guide and reference for LIHTC Compliance Monitoring Procedures. Upon Carryover Allocation of Tax Credits, a copy will be forwarded electronically.

## **PROGRAM APPROVAL**

In accordance with Low Income Housing Tax Credit regulations, the allocation plan must be approved by the Governor of the State before Credits can be allocated. Governor Jack Markell approved the State of Delaware's Low Income Housing Tax Credit Program Allocation Plan on January , 2016. Prior to the approval by the Governor, a notification of the public hearing on the Low Income Housing Tax Credit Program's Allocation Plan was published in The News Journal and the Delaware State News between November 24 and December 13, 2015. A public hearing was held on December 17, 2015 at Department of Natural Resources and Environmental Control's (DNREC) auditorium at 80 Kings Highway, Dover, DE. Oral and written comments concerning the Qualified Allocation Plan was received and recorded at the hearings. Oral and written comments were accepted until December 17, 2015 at 6:00 p.m. A transcript of the hearing is available for review at DSHA's Dover Office.

### **DISCLAIMER**

The information contained herein is intended to provide guidance to the applicant in terms of the operations of the Qualified Allocation Plan. The information is not intended to be restrictive of DSHA with respect to the operation of the Low Income Housing Tax Credit Program. By submitting an application, the applicant acknowledges and agrees that statements contained in the Plan are subject to change by DSHA to reflect changes in applicable laws, regulations and or to otherwise maintain consistency with other DSHA programs, goals or policies. Any changes to the Plan pursuant to this section will be duly noticed with an opportunity for public comments.

## **DSHA POLICY ON CIVIL RIGHTS COMPLIANCE**

The owner/developer/borrower and any of its employees, agents or subcontractors' in doing business with DSHA understands and agrees that it is the total responsibility of the owner to adhere to and comply with all Federal Civil Rights legislation inclusive of the Fair Housing Laws, Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act as well as any State and local civil rights legislation along with any required related codes and fair housing laws. Should DSHA not specify any specific requirements, such as design, it is nonetheless the owner's responsibility to be aware of and comply with all non-discrimination provisions relating to race, color, religion, sex, sexual orientation, handicap, familial status, national origin and any other classes protected in Delaware. The owners' compliance responsibility includes design requirements for construction or rehabilitation, equal opportunity in regard to marketing and tenant selection and reasonable accommodation and modification for those tenants covered under the federal and state fair housing laws.

## TAX-EXEMPT BOND FINANCED DEVELOPMENTS

### **Tax Exempt Bond Applications – not needing DSHA financing**

Applications for projects financed with tax-exempt private activity bonds will be accepted by DSHA throughout the year.

Properties financed with tax-exempt bonds may receive 4% Tax Credits without participating in the annual competitive allocation process described in this QAP for 9% applications. In order to receive 4% tax credits, properties must receive the following:

- A determination that they satisfy the requirements for the allocation under the QAP pursuant to the IRS Code Section 42(m)(1)(D);
- DSHA's determination that a property satisfies the requirements of the QAP and will be based on the property meeting all of the Threshold Requirements described in the QAP;
- Complete applications must be submitted and approved by DSHA before the tax-exempt bonds are sold;
- Tax-exempt bond-financed properties must make an application for Tax Credits prior to construction or rehabilitation of the property and will receive Tax Credits on the full amount of their eligible basis only if at least 50% of the development's aggregate basis is financed with tax-exempt bonds. In the event that a tax-exempt bond property is proposed in the same area as competing Tax Credit properties, the market study must provide an acceptable demand analysis; and
- An application must score a minimum of fifty (50).

### **Tax-Exempt Bond Applications and DSHA financing**

Developments proposed to be financed with tax-exempt bond financing and requesting funding from the Housing Development Fund or DSHA, must apply to DSHA on the same deadline as DSHA requires for its annual Tax Credit application round for 9% Tax Credits.

**NOTE: Developments applying for 4% tax-exempt bond financing and DSHA financing are not required to compete with the 9% Tax Credit applications.**

- A set-aside minimum of **\$6,000,000** of HDF funds will be made available for 4% tax-exempt bond applications seeking HDF funding. **Please see HDF supplement for additional information.**
- Eligible projects will include:
  - Preservation projects, which include Year-15 tax credit projects\*\* currently in DSHA's LIHTC portfolio; and
  - New Creation, which includes new construction and conversion projects.
- **Please see HDF supplement for additional information.**
- Projects will only receive Tax Credits on the full amount of their eligible basis only if at least 50% of the development's aggregate basis is financed with tax-exempt bonds. In the event that a tax-exempt bond property is proposed in the same area as competing Tax Credit properties, the market study must provide an acceptable demand analysis.

- DSHA's goal is for all 4% tax-exempt applicants to meet threshold in as many point scoring categories as possible.
- An application must score a minimum of fifty (50) points. If DSHA receives more than one 4% bond application seeking HDF or DSHA financing, the application(s) with the highest point score will be awarded a preliminary ranking over other applications.
- DSHA will be the bond issuer.
- DSHA's determination that a property satisfies the requirements of the QAP and will be based on the property meeting all of the Threshold Requirements described in the QAP.

Other Tax Exempt Bond Information:

- For developments seeking tax-exempt financing, DSHA may waive timelines, processing and other QAP requirements, in its discretion, to encourage and facilitate such financings. Additionally, for the purposes of the 4% Tax Credits, DSHA, upon a showing of good cause by the applicant, may waive the \$30,000 hard cost minimum requirement for substantial rehabilitation. Such a waiver shall be in the sole discretion of DSHA and shall only be granted upon a showing that the proposed rehabilitation is sufficient in terms of quality and significance, notwithstanding the fact that it does not meet the \$30,000 requirement.
- DSHA, at its sole discretion, may waive the requirement to make application for 4% Tax Credits and HDF financing on the same deadline date as the 9% Tax Credit application round, for applicants where a special appropriation is approved by the State Legislature or new Federal funding/subsidy for a specific development and/or type of development.
- DSHA may consider subsequent financing of phased sites on a case-by-case basis.
- \*\* For 4% tax-exempt applications, Y15 tax credit projects must demonstrate that the initial 15 year compliance period requirement will be met by the proposed construction closing date.

## **APPLICATION FEES AND PROCESSING**

Pursuant to 31 Del.C. § 4028, upon receipt of an application, DSHA will notify any state senators and representatives whose districts include the area where the applicant's proposed development is located, as well as the chief executive office of any local government having jurisdiction where applicant's proposed development is located.

A non-refundable application fee of **\$1,250** must accompany all applications, including application for Volume Cap credits, at the time of submission. At carryover/construction closing of the Credits, including Volume Cap Credits, an additional 1.50% of carryover/allocation amount x ten (10) years is due. Prior to the allocation of Credits, issuance of IRS Form 8609 or Carryover Agreement, whichever is issued first, a \$600 per unit compliance monitoring fee is due. All fees are non-refundable.

For projects requesting HDF financing, an additional non-refundable application fee of **\$1,000** must accompany all applications, including applications for Volume Cap credits and HDF, at the time of submission.

### **SEVERABILITY**

If any provision of the Qualified Allocation Plan or the application thereof to any applicant, person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Plan which can be given effect without the invalid provision or application, and to that end the provisions of this Plan are declared severable.