



**State of Delaware**

**Low Income Housing Tax Credit  
Qualified Allocation Plan**

**2023-2024**

**December 30, 2022**

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

John Carney, Governor

Eugene R. Young, Jr., Director

## Contents

Introduction.....	3
Program Approval.....	5
DSHA Policy on Civil Rights Compliance.....	6
The Delaware Freedom of Information Act.....	7
Definitions.....	8
Description of Housing Needs and Priorities.....	21
Housing Needs and Priorities.....	21
Preservation of Existing Assisted Affordable Housing .....	21
Needs of People with Disabilities and Special Populations.....	22
New Creation of Affordable Rental Housing .....	22
Tax Credit Allocations and Pools .....	24
Estimated Dollar Amounts for 2024 .....	24
Nonprofit Pool .....	24
Preservation/Rehabilitation Pool.....	25
New Housing Creation Pool .....	26
General Application Limits.....	26
Application Process .....	26
Technical Assistance Meetings Available to all LIHTC Applicants .....	27
Cure Period .....	27
Application Fees and Processing .....	28
DSHA Fees, Rates and Term Schedule .....	28
Tax-Exempt Bond-Financed Developments.....	29
Tax-Exempt Revenue Bond Fees.....	30
Threshold Requirements .....	30
Scoring and Ranking.....	39
General Information.....	39
DEVELOPMENT CHARACTERISTICS      55 possible points.....	39
COMMUNITY IMPACT                      58 possible points.....	43
TENANT POPULATIONS SERVED          45 possible points.....	49
USES OF RESOURCES                    38 possible points.....	51
DEVELOPMENT TEAM                    35 possible points.....	54

BONUS POINTS .....	57
Scoring Summary.....	58
Tiebreakers.....	59
REVIEW AND SELECTION PROCESS .....	59
State Basis Boost.....	60
Preliminary Ranking Notifications, Appeals and Unused Credits .....	60
Preliminary Reservation and Pre-Carryover Allocation Requirements .....	61
Forward Commitments .....	62
Post Tax Credit Award Requirements .....	63
DECLARATION OF RESTRICTIVE COVENANTS .....	63
Placed in Service Requirements.....	63
Final Closing and 8609 Requirements .....	63
Non-Compliance with Placed in Service Date – Forward Reservation .....	64
Cost Certification .....	65
Post Tax Credit Award Documents .....	66
Compliance Monitoring Procedures .....	67
Initial Review .....	67
Subsequent Review .....	67
Inspections .....	68
Data Systems.....	68
Minimum Low Income Set Aside.....	68
DSHA Average Income Policy .....	69
Rent Limitations.....	70
Income Requirement.....	70
Recordkeeping Requirements .....	71
Annual Project Certification and Review .....	73
Notice to Owner.....	74
Notice to Internal Revenue Service .....	74
Correction Period .....	75
Compliance Monitoring Fee .....	75
Compliance Monitoring Manual.....	75
2023-2024 Application Checklist for Low Income Housing Tax Credits .....	75

## Introduction

The Federal Low Income Housing Tax Credit (LIHTC) program was established by Section 252 of the Tax Reform Act of 1986 and was codified as Section 42 of the Internal Revenue Code (IRC) of 1986 as amended. 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 QAP 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 which:

- i) Sets forth selection criteria to be used to determine housing priorities of the housing credit agency that is appropriate to local conditions.
- ii) Gives preference in allocating housing credit dollar amounts among projects that:
  - a) Serve the lowest-income tenants;
  - b) Serve qualified tenants for the longest periods; and
  - c) Are located in qualified Census tracts...and the development of which contributes to a concerted community revitalization plan.
- iii) Provides a procedure that the Agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service (IRS) 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 QAP 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; and
- j) Preserving historic character.

The LIHTCs may be claimed annually for ten (10) years by the owners of, or investors in, qualified low-income rental housing. The maximum amount of annual credit is based on the depreciable costs of the 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 (10) year period.

Eligible developments include new construction, rehabilitation, and acquisition (if a substantial rehabilitation is being undertaken). The maximum credit percentage for qualifying costs in an eligible development is 9% for competitive new construction or rehabilitation costs awarded pursuant to the annual tax credit volume cap.

The Consolidated Appropriations Act of 2021 established a permanent minimum 4 percent rate for Housing Credit developments financed by tax-exempt multifamily bonds and for acquisition costs associated with all Housing Credit developments. The 4 percent rate is effective for buildings allocated acquisition housing credits after December 31, 2020, and for buildings financed with tax-exempt bonds issued after December 31, 2020.

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 fifteen (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 fifteen (15) year period.

The LIHTC Program is complex and evolving. Changes in the program adopted by Congress over the life of the program require careful review even 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 sponsor(s) and applicant(s) interested in applying for a tax credit allocation contact their tax accountant and attorney to review this program, the 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 LIHTC 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(s)/investor(s) to continue receiving the tax credit. Regulations, rulings, Revenue Procedures, and Technical Advice Memoranda (TAM) are regularly issued by the IRS. It is the sponsor's/applicant's obligation to understand and comply with the rules.

DSHA encourages all applicants to promote greater choice of housing opportunities, 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 in communities of opportunities for newly- created (conversion or new construction) projects, especially areas with minimal affordable rental units relative to their housing needs.

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 may include, but will not be limited to, a reduction in the allocated credit amount, the unilateral cancellation of an allocation, or penalty points that will be carried forward to applicant's subsequent DSHA LIHTC application.

## Program Approval

This QAP applies to all DSHA allocations for 2023 and 2024 Low Income Housing Tax Credits (“LIHTC”) pursuant to Section 42 of the Code and multifamily private activity tax-exempt bonds, the Housing Development Fund (“HDF”), Housing Trust Fund (“HTF”), and HOME Investment Partnership funds (“HOME”) in conjunction with DSHA’s LIHTC program. DSHA will have annual LIHTC applications round in 2023 and 2024.

In accordance with LIHTC regulations, the allocation plan must be approved by the Governor of the State before credits can be allocated. Governor John Carney approved the State of Delaware's LIHTC Program Allocation Plan on December 30, 2022. Prior to Governor Carney’s approval, a notification of the public hearing on the LIHTC Program's Allocation Plan was published in The News Journal and Delaware State News from November 21 to December 11, 2022. A public hearing was held as a virtual meeting on December 12, 2022. Oral and written comments concerning the QAP were received and recorded at the hearings. Oral and written comments were accepted until December 12, 2022 at 4:30 p.m. A transcript of the hearing will be available for review at DSHA's Dover Office and is posted to DSHA’s website at [www.destatehousing.com](http://www.destatehousing.com).

### **DISCLAIMER**

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

### **SEVERABILITY**

If any provision of the QAP, or the application thereof by 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.

## **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 stipulate 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 protected classes including, race, color, religion, sex, sexual orientation, handicap, familial status, national origin, source of income, and any other classes protected in Delaware. The owners' compliance responsibility includes design requirements for construction and/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.

## **The Delaware Freedom of Information Act**

By submitting an application for tax credits, 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 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 that 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 DSHA’s policy not to release application materials to any third party until after the ranking of projects and Preliminary Reservation of credits is 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 public documents related to application materials to the requesting party within fifteen (15) business days of a written request. Any requests should be directed to the FOIA Coordinator, Laurie Jacobs at [Laurie.Stovall@delaware.gov](mailto:Laurie.Stovall@delaware.gov)



## Definitions

The definitions and terms used within DSHA's QAP and LIHTC applications are an integral part of threshold requirements as well as the review and underwriting process. Therefore, each applicant is responsible for ensuring adherence to all applicable terms and definitions in the submitted application.

### Affordable

A unit is considered affordable if the cost of housing (rent plus utilities) is restricted to no more than 30% of the imputed household income, adjusted for family size. Imputed income is calculated assuming 1 person in an SRO and 1.5 people per bedroom.

### Appraisal

An independent appraisal conforming to the Uniform Standards of Professional Appraisal Practice (USPAP) and conducted in accordance with all DSHA standards is required with application. Regardless of whether the project received a tax abatement, the appraisal must provide the most recent tax assessment of the property and, where applicable, the value of the tax credit. The appraisal is an eligible development cost. DSHA may commission an appraisal to determine valuations for the site, land, and buildings for projects financed by DSHA. Appraisals may be ordered by DSHA for the top-ranked projects when the preliminary rankings are released.

### Balanced Housing Opportunities

Areas of the state are defined as follows:

- **Areas of Opportunity** – Delaware Market Areas A, B, and C and/or areas where students are attending schools achieving a high proficiency level of 85% or higher (as defined by HUD). These are strong high-value markets where new affordable housing opportunities should be supported.
- **Stable** – Delaware Market Areas D and E where a balance of market rate and affordable housing should be supported;
- **Distressed** –Market Areas F, G, H and I (as defined in *Delaware Market Valuation Analysis 2020*). These are weak markets, suffering from blight and concentrated poverty, where new affordable housing opportunities should be limited.
- **Saturated Distressed** –Market Areas F, G, H and I (as defined in *Delaware Market Valuation Analysis 2019*) where at least 10% of all housing units are assisted or subsidized. These highly distressed areas have a disproportionate share of affordable housing. New affordable housing that would further highly concentrated areas of poverty and exacerbate racial inequities should be strongly discouraged.

DSHA maps of the defined areas are available at the Balanced Opportunities Housing Maps

link: <https://arcg.is/0GXD8j0>

### Code

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

### **Complete Application**

A submission that includes the application (Part I, Part II, Part III and all exhibits), application fee(s), completed forms, all required certifications, and that meets all threshold and eligibility requirements. A checklist of required documents is provided in the QAP.

### **Concerted Community Revitalization Plan (CCRP)**

This may include, but is not limited to, a municipal and/or county comprehensive plan, a regional redevelopment plan, a local or neighborhood redevelopment plan or master plan as endorsed and approved by the local government, or a Downtown Development Districts (DDD) plan for a DDD designated by the Governor. The plan must have been adopted or updated in the last 5 years, certified by the agency that developed the plan, and specifically identifies the project as an area of need.

Plans not officially endorsed by any unit of local government may also be eligible at DSHA's sole discretion. When evaluating whether a proposed CCRP is eligible, DSHA will consider:

- The comprehensiveness and specificity of the CCRP, including defined geographic regions, timelines, and identified specific and measurable outcomes;
- The extent to which the CCRP demonstrates the need for revitalization and is of sufficient size and scope to have a significant and lasting positive impact on the community;
- Whether the CCRP describes commitments or strategies for obtaining public and private investment other than housing such as for infrastructure, transportation, open spaces, or commercial amenities;
- If proposed financing of the CCRP includes non-DSHA public or private resources;
- The community input involved in the creation of the CCRP. Such input may be demonstrated by participation of community organizations, business associations, CDCs, and/or resident meetings;
- Whether the CCRP identifies the service needs of residents, including, but not limited to, healthcare needs, residential supportive services, access to public benefits, and/or education and identifies strategies for addressing unmet needs;
- If the CCRP complies with applicable civil rights laws and responsiveness to the local jurisdiction's Affirmatively Furthering Fair Housing obligations; and
- For purposes of determining plan eligibility, qualifying updates to CCRP must involve, at a minimum, renewed community stakeholder engagement, evaluation of progress, and applicable updates to originally adopted strategic goals.

### **Development Consultant**

Consultants are members of the Development Team whose 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 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. Unless otherwise stated in the QAP and all attachments, consultant fees are not an eligible development expense.

**Conversion**

Conversion is defined as the date upon which construction financing shall convert to permanent financing, which shall be upon satisfaction of all conditions set forth in the Loan Agreement(s).

**Declaration of Restrictive Covenants/Extended Use Period**

The document recorded against the property receiving housing tax credits that runs with the land and lays out the restrictions applicable to the development and any use of the land during the extended use period. The Declaration will include waiver of right to participate in the Qualified Contract Process. The Extended Use Period is the second fifteen (15) year period, after the initial fifteen (15) year compliance period, unless a longer period is elected.

**Developer**

A developer (Owner) 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**

The developer fee is the amount paid as compensation for developing the proposed housing and covers the overhead and profit of the developer. Eligible tax credit basis for these purposes does not include 1) developer fees exceeding the Developer Fee limits listed below or 2) any Developer Fee paid on costs exceeding the Eligible Basis limits. See the Underwriting Guidelines for details regarding the developer fee limits and calculations.

**Development Team**

Includes, but is not limited to, the architect, developer, engineer, surveyor, real estate counsel, tax counsel, management agent, general contractor (when general contractor is chosen at application), and processing agent/development consultant (if applicable).

**Developed Land**

Any tax parcel containing an occupied building or structure utilizing electricity, sewer, and water lines is considered Developed Land. Streets or other right-of-ways do not constitute developed land unless the parcel immediately adjacent meets the definition of Developed Land. Parcels do not meet the definition of Developed Land by zoning classification.

**Division of Developmental Disabilities Services (DDDS)**

DDDS supports individuals with developmental disabilities and their families by providing community resources and services. DDDS will be the referral agency for Permanent Supportive Housing.

**Donated Land**

Donated land means land on which the development will be built or rehabilitated for which title or a lease for a term at least equal to the Extended Use Period 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 providing for either a closing date or an initial term must be submitted. The lease agreement must be attached and specify the 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**

An area authorized by the Downtown Development Districts Act of 2014 (the Act) and accomplished through local governments designating Districts and developing corresponding District Plans to support the goals of this Act.

**Eligible State Basis Boost**

An increase in eligible basis of up to thirty percent (30%), as determined solely by DSHA, and in accordance with the Allocation criteria.

**Eligible Basis Limitations**

Eligible basis limits are limitations on the depreciable costs permitted under this QAP, excluding any federal or state basis boost and costs associated with any market rate units. The limits replicate the Section 234 Basic Mortgage Limits established by HUD and utilized under the HOME Program.

Limits, effective 03/17/2022, are as follows:

<u>0 Bedroom</u>	<u>1 Bedroom</u>	<u>2 Bedroom</u>	<u>3 Bedroom</u>	<u>4 Bedroom</u>
\$ 159,754	\$ 183,132	\$ 222,694	\$ 288,094	\$ 316,236

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 lesser of permitted eligible basis or the eligible basis limit.

With the exception, 9% LIHTC projects that meet **all** the following conditions will be subject to a total eligible basis cap of the lesser of 115% of the Section 234 Basic Mortgage Limits or the amount of actual eligible basis:

- Project competes in the Preservation/Rehabilitation pool;
- Project meets the definition of Substantial Rehabilitation;
- Project is not located in a QCT or a DDA and is not otherwise automatically eligible for the 130% basis boost;
- Project contains 40 units or less, including any newly constructed units included in the overall development proposal; and
- No more than 15% of the existing units may be reconfigured to increase the bedroom count within the unit.

4% Tax Exempt Bond projects will be subject to a total eligible basis cap of the lesser of 200% of the Section 234 Basic Mortgage Limits or the amount of actual eligible basis.

All caps are subject to final subsidy layering review and DSHA reserves the right to reduce the allocation of credits to any project that is in excess of the amount required to provide the proposed affordable housing.

## **Energy Audit**

For new construction and gut-rehab projects, a review of preliminary drawings with the application to include the proposed energy saving measures into the final design will be required. Evidence of an integrated design process and review of drawings by the project Developer, architect, engineer, general contractor and energy consultant (HERS rater) should be provided at application. For projects that are moderate- or substantial- rehabilitation projects, an ASHRAE protocol energy audit assessment should be provided at application. Audits should be conducted by a professional firm whereby the individuals performing the audit are certified by the Building Performance Institute which covers existing properties and determines which energy saving measures can be incorporated into the Architects' design. ASHRAE protocol assessment should be Level I or Level II audit depending on the scope of the rehab.

## **Environmental Site Assessment**

A Phase I Environmental Site Assessment prepared in accordance with ASTM E-1527-13 that is no more than 12 months old at the time the application is submitted to DSHA. The report must 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. If an award is made to an Applicant and a Phase II is required, the Phase II report must be completed and submitted as a condition prior to carryover.

## **Environmental Audit**

A Phase I Environmental Audit must include the results from the following tests: lead in water, lead-based paint, asbestos, and radon. Cost estimates for any remediation work shall be provided and included in the executive summary and in the development budget. NOTE: 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.

## **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 approved syndication fees and allowances by DSHA (i.e., syndicator legal/accounting fees, 1.50% allocation/carryover fees, transitional reserves, operating reserves, replacement reserves, tax and insurance escrows, and monitoring fee amounts).

## **Forward Reservation/Credit Exchange**

In the event a development receives an Allocation of credits and cannot meet the placed in service date requirement due to circumstances entirely beyond the control of the development team, as determined by DSHA, such credits may be returned without penalty and a forward reservation of credit may be made by DSHA. (See QAP section describing in detail.)

### **Forward Commitment**

A commitment of credits from the subsequent year's tax credit authority made at the discretion of DSHA to fund a project other than the highest-ranking applicant in each allocation pool. The amount of any such forward commitment shall not exceed the amount remaining in the current year's tax credit authority after the highest-ranking applicant in each allocation pool has received the award to which it is entitled.

### **Historic Consultant**

For developments seeking historic rehabilitation credit, a contract with a certified historic consultant must be submitted with the application and a reasonable historic consultant fee may be included in eligible basis and total development costs. This cost will not be required to be paid from the developer fee but rather will be treated as other professional costs are treated.

### **Homeless**

Any individual or family meeting the definition under any category (1, 2, 3, or 4) as defined by the HUD: Homeless Emergency Assistance and Rapid Transition to Housing Defining 'Homeless', 76 Fed. Reg. 75994, 76031-76014 (Dec. 2011).

### **HOME ARP**

Sec. 3205 Homelessness Assistance and Supportive Service Program – supplemental HOME funds to assist individuals or households who are homeless, at risk of homelessness and other vulnerable populations by providing housing, rental assistance, supportive services, and non-congregate shelter.

Any allocation of HOME ARP requires the following qualifying populations:

- Homeless, as defined in Section 103(a) of the McKinney-Vento Homeless Assistance Act;
- At-risk of homelessness, as defined in Section 401(1) of the McKinney-Vento Homeless Assistance Act;
- Fleeing, or attempting to flee, domestic violence, sexual assault, stalking, or human trafficking, as defined by the Secretary;
- Other populations who do not qualify under any of the populations above but meet one of the following criteria:
  - a. Other families requiring services or housing assistance to prevent homelessness;
  - b. Those at greatest risk of housing stability

Applicants may not request HOME-ARP funds. DSHA will determine, at its sole discretion, if a development is eligible for these funds. Use of the funds will be in accordance with DSHA lending limits as established in the Funding Supplement.

### **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 have 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 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 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.

### **Infill**

A site with 75% of its perimeter bordering existing Developed Land and has immediate access to existing infrastructure including roads, water, and sewer. Any fraction of the perimeter that borders waterfront (other than a stream) is excluded from the calculation.

### **Interim Income**

All project operational income received prior to permanent closing, including federal housing assistance payments, less routine operating expenses (including debt service normally paid during the construction period, but specifically excluding construction loan interest unless pre-approved in writing by DSHA). Interim income used 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.

### **Market Study**

A study meeting the requirements as particularly described in the QAP Attachments and is certified by the market analyst 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;
- D. He or she has conducted the study in accordance with Standards 4 and 5 of the Uniform Standards of Professional Appraisal Practice (USPAP); and
- E. He or she certifies that DSHA's Market Study requirements were followed.

### **Minority-Owned/Women-Owned/Veteran-Owned/Service Disabled Veteran/Individuals with Disabilities -Owned Businesses**

The Office of Supplier Diversity (OSD) defines diverse companies that have (a) 51 percent owned by minority, Veteran and/or woman or (b) 51 percent managed by minority group, service disable veteran/veteran and/or woman and (c) certified as a MVWBE (or home state equivalent) in home state of business as for-profit business as diverse businesses.

OSD must approve all diverse businesses and certification approvals could take approximately six (6) weeks. A copy of OSD application has been posted in the download documents. More information on the OSD process is available at this link: [Certifications - Division of Small Business - State of Delaware](#)

The Office of Supplier Diversity link is located at <https://business.delaware.gov/osd/>

### **Mixed Income/Market-Rate Development**

A mixed income/market rate development is one where at least 20% of the total units in the development are market rate units that are not rent-restricted or subject to income limits. For projects receiving HDF financing, the application must demonstrate adequate financing for the market rate units that does not include LIHTC equity or HDF financing.

### **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; or
- 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; or
- ii. Completely-vacant and/or abandoned structures are considered new construction, including Choice Neighborhood applications.

### **Opportunity Zones (OZ)**

An Opportunity Zone is an economically-distressed community where new investments, subject to certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the state and that nomination has been certified by the Secretary of the U.S. Treasury via delegation of authority to the Internal Revenue Service.

Opportunity Zones are designed to spur economic development and job creation in distressed communities by providing tax benefits to investors. First, investors can defer tax on any prior gains invested in a Qualified Opportunity Fund (QOF) until the earlier of the date on which the investment in a QOF is sold or exchanged, or December 31, 2026. If the QOF investment is held for longer than 5 years, there is a 10% exclusion of the deferred gain. If held for more than 7 years, the 10% becomes 15%. Second, if the investor holds the investment in the Opportunity Fund for at least ten years, the investor is eligible for an increase in basis of the QOF investment equal to its fair market value on the date that the QOF investment is sold or exchanged.

OZ Census tracts in Delaware are linked to the area of opportunity map:

<https://arcg.is/0GXD8j0>

### **Permanent Supportive Housing (PSH)**

Permanent supportive housing is considered long-term, permanent housing that has supportive services for individuals with disabilities experiencing homelessness or persons with disabilities paired with supportive services tailored to the population served. This type of supportive housing enables special needs populations to live as independently as possible in a permanent setting. The supportive services may be provided by the organization managing the housing or coordinated by the applicant and provided by other public or private service agencies. There is no definite length of stay.



## **Persons with Disabilities**

As defined by the Americans with Disabilities Act (as amended) 42 U.S.C. §12102(1)(A)-(C):

- A. a physical or mental impairment that substantially limits one or more major life activities of such individual;
- B. a record of such an impairment; or
- C. being regarded as having such an impairment.

## **Preliminary Reservation**

The initial reservation of a tax credit allocation that may be conditioned and subject to amendment, change, cancellation, or modification based on DSHA's underwriting and the timely finalization of financing commitments included in the application.

## **Preservation/Rehabilitation**

- A. Tax Credits: Any tax credit housing development (including subsidized tax credit housing developments), (1) in need of Substantial Rehabilitation and (2) at risk of losing its affordability of its extended use period within the next five (5) years.

For purposes of determining eligibility, DSHA will look at a development's remaining extended use period as of the last day of the application year. For example, a development that applies in April of 2024 for an allocation of credits must be at 5 years or less of the remaining extended use period as of December 31, 2024. DSHA will round up on this policy, meaning if a project is at 5 years and 1 day as of December 31, the development will not be considered to be within the 5-year extended use expiration window.

- B. Subsidized: Any currently-occupied subsidized housing development that has not been syndicated with tax credits including 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).

For purposes of determining eligibility, DSHA will look at a development's remaining subsidy contract period as of the last day of the application year. For example, a development that applies in April of 2024 for an allocation of credits must be at 2 years or less of the remaining subsidy contract period as of December 31, 2024. DSHA will round up on this policy, meaning if a project is at 2 years and 1 day as of December 31, the development will not be considered to be within the 2-year subsidy contract expiration window.

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.

**NOTE: For Tax-Exempt Preservation projects, please refer to the Tax-Exempt page.**

## **Qualified Census Tract**

A Census tract, as defined in Section 42(d)(5)(C) of the Code and designated by the Secretary of 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.

### **Qualified Nonprofit Organization**

An entity that owns a 100% managing interest in the development (as managing general partner, directly, or through a partnership), materially participates in the development and operation of the development throughout the compliance period, and is not affiliated with or controlled by a for-profit organization.

Section 42(h)(5)(C) of the IRC defines a qualified nonprofit 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.

### **RAD Consultant**

For developments seeking Rental Assistance Demonstration (RAD) subsidy, a contract with a certified RAD consultant must be submitted with the application and a reasonable RAD consultant fee may be included in eligible basis and total development costs. This cost will not be required to be paid from the developer fee but rather will be treated as other professional costs are treated.

### **Related Party**

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

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

A demonstration program funded by HUD as defined by 42 U.S.C. §8013, as amended. Section 811 is a HUD program subject to HUD's regulations at 24 C.F.R. 891, as amended. Administered by DSHA, DSHA enters into Rental Assistance Contracts (RACs) with owners of new or existing multifamily rental apartments to provide PRA for a percentage of units targeted to extremely low-income non-elderly 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).

### **Senior Development**

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

### **Single Room Occupancy (SRO)**

SRO housing 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.

## **Social Services**

Activities provided to the residents of a development to enhance and improve their quality of life. The services must be affordable, appropriate, available, accessible, and must be provided to the development's residents in every calendar quarter for a total of sixteen (16) hours per year.

Pre-Approved services include:

Parenting Programs

Literacy Programs

Daycare

Job Training

Nutritional Services

Transportation

Financial Counseling

Public Benefits Counseling

Fitness Programs

Prior to the application deadline, applicants may propose social services, in writing, in addition to those listed and may, at DSHA's sole discretion, receive points for them.

## **Special Populations**

Special populations include:

- Persons with HIV/AIDS related illness;
- Literally or Imminently Homeless;
- Survivors of Domestic Violence (in accordance with Del. Code Title 13, § 703A) – this includes households fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking;
- Persons with Disabilities including persons with mental illness; persons with physical disabilities, and/or 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.

## **Subsidized Housing**

Any housing that presently has HUD, USDA Rural Housing Service (RD), HUD public housing subsidies and/or equivalent project-based rental-assistance contracts on at least 75% of the units. 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**

A unit or building that is in need of Substantial Rehabilitation in order to make the unit or building structurally sound, safe and habitable to meet local housing or building codes. A housing unit is considered 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 a safe or adequate source of heat;
9. Does not have a kitchen; and/or
10. Has been declared unfit for the habitation by an agency or unit of government.

Critical defects include: Walls, partitions, supporting members, sills, joists, rafters, or other structural members that list, lean, or buckle; are rotted, deteriorated, or damaged; or have 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 in such condition that they will fail or collapse. Roof, flashings, exterior walls, basement walls, floors, and doors and windows that are not weather tight.

**NOTE:** SRO housing is NOT substandard solely because it does not contain sanitary and/or food preparation facilities.

**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 development is considered to be undergoing substantial rehabilitation if the minimum rehabilitation cost per unit is at least \$50,000 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, and
- 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, projects removing units for accessibility purposes or adding a community center must maintain at least 75% of the original unit configuration to be considered a rehabilitation development.

**Survivor of Domestic Violence**

Any individual or family who has been subject to actions as defined by the Violence Against Women Act (as amended) 42 U.S.C. §13925(a)(8) or Del. Code Title 13, § 703A, inclusive or the HOME ARP program

**Target Units**

Target Units are units set aside for eligible Special Populations (see definition) and are rent and income restricted to 40% AMI or 30% AMI for Permanent Supportive Housing units (see definition) and have applicants referred from a Referral System managed by DSHA or DDDS for permanent supportive housing. Regardless of the size of the development, all developments with project-based rental assistance must target:

- Five percent (5%) of all units or five (5) units, whichever is greater, for eligible Special Populations; or
- Five percent (5%) of all units or three (3) units, whichever is greater for Permanent Supportive Housing.

Target Units must be included in a Referral System agreement between the referring entity, DSHA, and the owner to assure that sufficient referrals of eligible Special Population households are received at the time of execution of the carryover agreement.

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

PSH referrals will be completed via an agreement with the service provider non-profit, DSHA, DDDS, and the owner to ensure that sufficient referrals of special population-eligible households for tenancy are received at the time of execution of the carryover agreement or placed in service. PSH units must be rent- and income-restricted to 30% AMI and units may include project-based subsidy.

**Violence Against Women Act**

Refers to the laws codified at 42 U.S.C. § 13931 et. seq. as amended by Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (2013) and may be amended from time to time.

## 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 (6) submarkets in the State's three (3) 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.

A new statewide housing needs assessment is underway in 2022-2023. In the interim, other updated sources of data continue to support these priority needs.

### Preservation of Existing Assisted Affordable Housing

According to the [National Housing Preservation Database 2022 data](#), Delaware's inventory of assisted multifamily rental housing includes approximately 14,300 units. 858 of these units have affordability restrictions expiring in the next five years, 2,441 in the next ten years. Not all of these sites are necessarily high-risk, and many have affordability restrictions from multiple public sources. Delaware has made significant progress in preserving high-risk sites in the past decade, but as new federal rental assistance is extremely limited, preserving sites with this assistance and in need of major rehabilitation remains important to preserving Delaware's affordable rental housing stock. Preservation needs include:

- Older sites in need of extensive rehabilitation or potential 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, 19% of people with disabilities (over 20,000 people) have income below the federal poverty level, and this has increased 13% in the past five years. 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. A person receiving Supplemental Security Income (SSI) receives only \$841/month, or about 15% of Area Median Income (AMI) in Delaware. The [Corporation for Supportive Housing](#), using national datasets, estimates a need for 2,009 units of supportive housing in Delaware.

Since 2011, the Delaware Department of Health and Social Services (DHSS) has been working to accomplish systemic reform to prioritize community-based care for people with disabilities in Delaware. 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 that are 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 was for households with income below 50% of Area Median Income (AMI). Demand for new housing has shifted to smaller, more affordable homes and demand for rental units particularly has surged. In addition to demand for new units, there are also many currently housed renter households who are paying far more than they can afford for housing (cost-burden).

There are approximately 45,000 cost-burdened renter households in Delaware, 43% of renter households in the state. 74% of these households have income below 50% of Area Median Income (AMI). 22% of renter households in the state are severely cost-burdened, paying more than 50% of their income for housing costs. Most vulnerable are extremely low income households (income below 30% of AMI) who are severely cost-burdened. There are approximately 16,000 households in Delaware in these circumstances.

<b>Cost-Burdened Renter Households</b>				
	<b>Kent</b>	<b>New Castle</b>	<b>Sussex</b>	<b>Delaware</b>
Total Renter Households	20,360	66,080	18,100	104,540
Total Cost-Burdened Renter Households	10,029	27,650	7,705	45,384
<i>Cost Burden 30-50% of Income</i>	5,370	12,985	4,075	22,430
<i>Cost Burden &gt;50% of Income</i>	4,659	14,665	3,630	22,954
<hr/>				
% of Renter Households Cost-Burdened	49%	42%	43%	43%
% of Renter Households Severely Cost-Burdened	23%	22%	20%	22%
<i>Source: HUD CHAS Data, 2015-2019</i>				

<b>Cost-Burdened Renter Households by Income</b>				
	<b>Kent</b>	<b>New Castle</b>	<b>Sussex</b>	<b>Delaware</b>
<30% AMI	3,220	12,800	3,145	19,165
30 - 50% AMI	2,685	9,190	2,560	14,435
>50% AMI	4,124	5,660	2,000	11,784
<b>Total</b>	<b>10,029</b>	<b>27,650</b>	<b>7,705</b>	<b>45,384</b>

*Source: HUD CHAS Data, 2015-2019*

<b>Severe Cost-Burden (&gt;50% of Income) by Income</b>				
	<b>Kent</b>	<b>New Castle</b>	<b>Sussex</b>	<b>Delaware</b>
<30% AMI	2,730	10,870	2,310	15,910
30 - 50% AMI	1,470	3,150	1,025	5,645
>50% AMI	459	645	295	1,399
<b>Total</b>	<b>4,659</b>	<b>14,665</b>	<b>3,630</b>	<b>22,954</b>

*Source: HUD CHAS Data, 2015-2019*

It is important to note that these data sets are almost all at least a couple of years old, from the 2015-2019 or 2016-2020 American Community Survey (ACS), the most recent available. They do not reflect the impacts of the COVID-19 pandemic and significant increases in rents and decline in the rental vacancy rate in Delaware in 2020-2022. Nationally, the Joint Center for Housing Studies' 2022 [State of the Nation's Housing](#) report found year-over-year increases in rents of over 10%. A 2022 HUD [Housing Market Profile](#) of the Philadelphia-Camden-Wilmington, Pennsylvania, New Jersey, Delaware Maryland metropolitan area noted that "During the past year, the apartment vacancy rate in the Philadelphia Metropolitan area declined, whereas the average rent increased significantly." While multifamily construction has increased, it still has not kept pace with rental market demand, and much new construction is targeting higher income levels. HUD's 2021 Comprehensive Housing Market Analysis of the Wilmington metro area projected 3-year (Jan. 1, 2021 – Jan 1., 2024) housing demand of 1,650 rental units and only 830 under construction at the time.



## Tax Credit Allocations and Pools

Developments will first compete 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. DSHA may, at its sole discretion, award unused credits in each pool to the next highest-ranking project, regardless of the project's respective pool. Applicant tax credit requests for competitive 9% credit are limited to a maximum of \$1,000,000 per development.

The highest ranked nonprofit application will receive the first allocation of credits, up to the lesser of the amount requested, the amount required for financial feasibility, or the maximum permitted allocation per development. The remaining credits will be divided equally between the New Housing Creation and Preservation/Rehabilitation pools. The highest-ranked project in each pool will be awarded credits up to the lesser of the amount available in the respective pool or the maximum permitted allocation amount per development. In the event of additional credits left in either pool, the remainder will go first to fill any unmet need where the credit amount was insufficient to meet the highest-ranked project's feasibility need, and second into a remainder pool awarded to the highest-ranked project requiring the lowest amount of credits and capable of feasibility with the remainder, irrespective of type. In the event that the total credit amount available in a pool is insufficient for feasibility of the highest-ranked project in that pool, a forward commitment may be made available pursuant to DSHA's Forward Commitment policy as defined herein.

If, after the first project in each pool has been awarded credits, applications from different pools end up competing against one another, the score of each will be scaled as necessary to adjust for total possible points in preservation / new creation and to provide an equitable comparison among the applications.

## Estimated Dollar Amounts for 2024

The estimated dollar amounts for 2024 are based on the annual tax credit authority available. 2023 forward reservations and commitments reduce Delaware's net available Tax Credit amount to approximately **\$3,360,000**.

## Nonprofit Pool

Developments that compete in the Nonprofit Pool but do not receive an allocation will still be eligible to compete in their respective pools.

DSHA requires that the nonprofit partner maintain a 100% ownership interest in the general partner (or managing entity) throughout the compliance period. For nonprofit/for profit development team partnerships or joint venture developments, applicants must submit an agreement outlining the current and long-term roles of the partners with the application. **NOTE:** Ownership entities that include nonprofit participation but that do not meet the definition of a Qualified Nonprofit organization (see Definitions section) may apply, but will not be eligible for consideration to compete in the Nonprofit Pool.

In addition, in order for a specific nonprofit 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).

### Preservation/Rehabilitation Pool

To qualify for this pool, the development must meet either the following conditions of A or B:

- A. Tax Credits: any housing development (including subsidized tax credit housing developments financed in part by an allocation of credits in any previous year that has completed its compliance period) and is:
  1. In need of substantial rehabilitation; and
  2. At risk of losing its affordability within the next five (5) years.
- B. Subsidized: any currently-occupied subsidized housing development (that has not been syndicated with tax credits) and/or demolition/new construction of subsidized units (see definition of subsidized housing) that is:
  1. In need of substantial rehabilitation; or
  2. At risk of losing its affordability (within two (2) years of application).

In order to qualify for A (Tax Credits), the applicant must meet the definition of Substantial Rehabilitation or submit written confirmation from the tax credit allocation agency that the development’s affordability expiration is within the next five (5) years.

In order to be eligible for B (Subsidized) the applicant must:

1. Meet the definition of substantial rehabilitation or provide written confirmation from the contract administrator of imminent expiration of affordability controls within two (2) years of application; and
2. Provide a letter of confirmation that the funding source is interested in receiving an application for all applicable assistance; and
3. Commit to making an application for continued project-based housing assistance payments and/or rental assistance payments for the longest possible period and to continue to apply for extensions. The obligation to apply for rental assistance payments will be a condition of any Tax Credit preliminary reservation and/or carryover agreement and a confirmation of rental assistance payments must be received prior to construction closing.
4. Provide confirmation the project has never received tax credits.

**NOTE:** Properties that are not contiguous can apply under one application as long as the ownership entity is under common ownership for all properties and they are located in the same county.

**NOTE:** For Tax-Exempt Preservation projects, please refer to the Tax-Exempt page.

## New Housing Creation Pool

All applicants in this pool must be new creation developments (see definitions). All developments will be family (non-senior sites) unless one of the following conditions applies:

1. The application is for a senior project with a rental subsidy contract for at least 25% of the newly-constructed units; and/or
2. The application is for a senior 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.

## General Application Limits

No development may receive more than fifty percent (50%) of the State's annual credit authority available during any allocation year, based on the maximum eligible basis limits, nor may any single development entity be eligible to receive more than fifty percent (50%) of the total credit authority available during any allocation year. This shall include, but not be limited to, any consultants that have or will have an interest in the ownership of the development whatsoever, including through a general, limited general, limited partner, or special limited partner relationship, 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 may have its next ranked development(s) eliminated. DSHA may, at its sole discretion, allow the development entity to reduce its requested credit amount to avoid having its next ranked development(s) eliminated, especially if a cure item including missed or additional costs that increase the LIHTC request causes a development entity to exceed 50% of the total allocation dollars available.

## 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.

2024 Applications must be submitted to DELAWARE STATE HOUSING AUTHORITY, 18 The Green, Dover, Delaware 19901, **no later than 3:00 p.m. on April 26, 2024**. Late submissions will not be accepted. One complete paper copy of the LIHTC application with all attachments/exhibits and one electronic (flash drive) application must be submitted. All paper applications must have original signatures. The electronic application should be labeled with the Project Name. A Table of Contents should list the application, pro-forma, points worksheet, and each exhibit number and name. The exhibits should be scanned as separate files and labeled accordingly.

Only complete application packages will be considered for a Preliminary Reservation of 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 QAP must be submitted in writing to DSHA for clarification no later than fifteen (15) days prior to the submission deadline date, except for waiver requests, which must be submitted no later than thirty (30) days prior to the submission deadline (see below).

**No waiver requests will be entertained for any threshold requirements. All waiver requests relating to point categories or design and rehabilitation/construction standards must be submitted no later than thirty (30) days prior to the application deadline with a payment of \$500 per waiver requested. No more than three (3) waivers may be requested for the same application. Points will be subtracted from the relevant point category for those waivers that are granted in point categories. Approved waiver requests from any applicant awarded an allocation will be made available to the public after awards are announced by posting to DSHA's website. Unforeseeable and unavoidable circumstance waivers may be granted outside of the waiver limit at DSHA's sole discretion.**

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 15-year compliance period for such credits after the year such building is placed in service. This also includes all developments for which tax-exempt bonds of DSHA or an issuer other than DSHA has been issued (by DSHA or other issuers) and are still subject to the initial compliance period.

### **Technical Assistance Meetings Available to all LIHTC Applicants**

DSHA offers Technical Assistance (TA) meetings to provide applicants the opportunity to discuss their development in detail with DSHA and to answer questions pertaining to the LIHTC program, other DSHA funding programs, and the application process.

Participation in the TA process is strongly encouraged for all applicants. Applicants may attend an in-person TA Meeting or attend by teleconference.

### **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 correction, applicants will be given 48 hours from the time of DSHA notification to cure defects with their application. If DSHA allows an applicant to cure minor defects, that does not constitute approval or acceptance of the application and is not an assurance that the application, upon further review, will be deemed acceptable. Example of items that DSHA may consider as “curable” include:

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; and/or
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 forty-eight (48) hours (excluding weekends and legal holidays) from the notification from DSHA. 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.

### **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 officer 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 applications 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 (\$850/unit for projects utilizing Income Averaging). All fees are non-refundable.

For projects requesting DSHA funding sources, including, but not limited to, Housing Development Fund (HDF), National Housing Trust Fund (NHTF), Affordable Rental Housing Program (ARHP), or HOME Program (HOME) financing, an additional non-refundable application fee of **\$1,850** must accompany all applications, including applications for volume cap credits at the time of submission.

### **DSHA Fees, Rates and Term Schedule**

Please refer to DSHA's Fee Rate and Term Schedule in the Funding Supplement at the following link: [http://www.destatehousing.com/Developers/lihtc/2023/2023\\_qap\\_guidelines.pdf](http://www.destatehousing.com/Developers/lihtc/2023/2023_qap_guidelines.pdf)

## Tax-Exempt Bond-Financed Developments

Applications for projects financed with tax-exempt private activity bonds will be accepted by DSHA throughout the year, and may receive 4% tax credits without participating in the annual competitive allocation process described in this QAP for 9% applications, but must meet the threshold requirements described below.

Applications for 4% tax credits seeking additional DSHA funding, including HDF funding must compete in the annual allocation process. In the event that additional DSHA funding set aside for 4% tax credits is not oversubscribed at the April submission date, the remaining funds set aside will be available for applications submitted on a rolling basis until a new QAP is adopted.

Additionally, in order to receive non-competitive tax credits, all of the following must be met:

- 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;
- 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
- DSHA may, at its sole discretion, waive the requirement to make application for 4% Tax Credits and DSHA financing on the same deadline date as the 9% Tax Credit application round, for applicants where a special appropriation of project-based subsidy is approved by the State Legislature or new federal funding/subsidy for a specific new development and/or type of new development.
- An application must score a minimum of seventy-five (75) points.
- Eligible projects include:
  - Projects that have received prior tax credit allocations (re-syndication projects);
    - Re-Syndication projects, must have completed the Year-15 <sup>1</sup> compliance period and are currently in DSHA's LIHTC portfolio;
  - Preservation/rehabilitation projects with no previous allocations and;
  - New Creation, which includes new construction and conversion projects.

---

<sup>1</sup> For 4% tax-exempt applications, Y15 tax credit projects must demonstrate that the initial fifteen (15)-year compliance period requirement will be met by the proposed construction closing date.



- DSHA will be the bond issuer.
- All rehabilitation projects must follow the Capital Needs Assessment (CNA) Process including the life expectancy chart. DSHA will not allow matrix rehabilitation without adhering to the CNA. (See Design and Construction Standards for rehab standards requirements for tax-exempt bond projects).
- For developments seeking tax-exempt financing, DSHA may waive timelines, processing and other QAP requirements, at its sole discretion, to encourage and facilitate such financings.
- DSHA may consider subsequent financing of phased sites on a case-by-case basis.

## Tax-Exempt Revenue Bond Fees

All applicable fees are outlined in the Funding Supplement at the following link: [http://www.destatehousing.com/Developers/lihtc/2023/2023\\_qap\\_guidelines.pdf](http://www.destatehousing.com/Developers/lihtc/2023/2023_qap_guidelines.pdf). The fees are applicable to all applicants seeking DSHA resources and should be included in the development budget of the application. Interest rates and annual expenses are determined during underwriting based upon market conditions. All fees are non-refundable, non-transferable, and due as outlined in the Funding Supplement.

## Threshold Requirements

Applications for either competitive 9% credit or for 4% tax exempt bond financing shall meet all of the threshold eligibility requirements listed in this section. In addition, applications must meet all applicable definitions and terms within the QAP and related documents for threshold purposes.

**All applications are subject to a site visit by DSHA, which must be scheduled no later than 21 days prior to the application deadline. The purpose of this visit is to determine the suitability of the development site, including visibility, access to rights of way routinely used for walking or biking, and nearby land uses. Proposed acquisition/rehabilitation developments, including conversion projects, must notify DSHA in writing sixty (60) days in advance of application submission to schedule a pre-inspection and site review.**

1. Projects must set-aside a minimum of:
  - a. Twenty percent (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. Forty percent (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.
  - c. At least forty percent (40%) or more (25% or more in the case of a project described in section 142(d) (6)) of the residential units in the project must be both rent restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the imputed income limitations designated must not be more than 60% of the area median gross income. The designated imputed income limitation of a unit can only be 30%, 40%, 50%, 60%, or 80% of the area median gross income. The average income test is only available for elections made after March 23, 2018. (see DSHA's compliance monitoring procedures for more information).

The development's minimum set-aside test (above) must be selected at the time of application for tax credits and maintained for the entire compliance period. Once made, all decisions are irrevocable.

2. Units must be rent-restricted with gross rents for a qualifying unit no greater than 30% of the Imputed Income Limitation applicable to such units. The imputed income is the income limitation that would apply assuming an SRO or efficiency unit was occupied by 1 person and a unit with one or more bedrooms was occupied by 1.5 persons per bedroom. If the cost of any utilities, excluding telephone, are paid directly by the tenant(s), the gross rent must include the applicable utility allowance. Utility allowances may be determined in a variety of ways, including 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 underwriting criteria for more detail at the following link):  
[http://www.destatehousing.com/Developers/lihtc/2023/2023\\_qap\\_guidelines.pdf](http://www.destatehousing.com/Developers/lihtc/2023/2023_qap_guidelines.pdf)

3. Tax Credit units must be developed and maintained in equivalent quality and square footage as non-tax credit units of similar bedroom size.

4. No application will be accepted for fewer than 20 units.

5. All units must meet applicable building and/or housing codes.

6. For developments that have previously received tax credits, the 15-year compliance period must have expired on all buildings before applying for new tax credits. See preservation pool requirements for further information.

7. **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.

8. **Mandatory Compliance Period**

All applicants must agree to a thirty (30) year, extended low-income use for the Development. In addition, all developments must agree to the initial 15-year compliance period and agree to compliance for the extended use 15-year period.

9. **State Strategies for Policies and Spending**

DSHA promotes the use of the State Strategy Level areas by tailoring programs based on the Levels. In keeping with this strategy, tax credit proposals must be located in Investment Levels 1, 2, or 3. Surrounding area 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: <https://stateplanning.delaware.gov/strategies/documents/2020-state-strategies.pdf>

10. **Compliance with Discrimination Laws**

All applicants must comply with the provisions of all federal, state and local laws prohibiting discrimination in housing on the grounds of any protected class including, 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). All applicants must comply with all applicable provisions of the Violence Against Women Act (VAWA), including prohibition from discrimination in tenancy on the basis of applicant's history as a victim of a VAWA crime, threatened victim of a VAWA crime, or denials based on criminal history as a result of such victimization. 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).

#### 11. Waiver of Qualified Contract

By submitting an application for Low Income Housing Tax Credits, the applicant waives the right to request a qualified contract under Section 42(h)(6)(E)(i) of the IRC.

#### 12. Minimum Household Size

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

#### 13. Minimum Gross Square Footage

All proposals must comply with local municipal code requirements. Additionally, all proposals must meet DSHA's established minimum gross square footage requirements, based on bedroom size, for new construction and conversion developments (including conversion of non-residential units to residential use):

- a. One bedroom - 700 square feet;
- b. Two bedrooms - 850 square feet;
- c. Three bedroom - 1,050 square feet;
- d. Four bedroom – 1,300 square feet
- e. Efficiencies, (including lofts) – 500 Square feet and Single Room Occupancy 100 square feet

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

#### 14. Target Units Serving Special Populations

All developments are required to target one of the following:

- 1) the greater of 5% of the total units or three (3) units for special population-eligible households (as defined below) with household incomes and rents at 40% of AMI or below, **or**
- 2) the greater of 5% of the total units or three (3) units for permanent supportive housing units.

**All developments receiving project-based rental assistance must target the greater of 5% or five (5) units.**

---

<sup>2</sup> DSHA reserves the right to waive minimum household size eligibility for two-bedroom units when it is satisfied that conditions such as 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 exist. 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.

Special populations for the target units include:

- Persons with HIV/AIDS related illness;
  - Literally or Imminently Homeless;
  - Survivors of Domestic Violence (in accordance with Del. Code Title 13, § 703A) – this includes households fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking;
  - Persons with Disabilities including persons with mental illness; persons with physical disabilities, and/or 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.
- 
- Permanent Supportive Housing target units are for individuals experiencing homelessness with disabilities or persons with disabilities paired with supportive services; and
  - Other special-needs populations identified in DSHA’s needs assessment may be considered at DSHA’s sole discretion.

Permanent Supportive Unit referrals will be completed via an agreement with the referring entity between the non-profit, DSHA, DHSS, and the owner to ensure that sufficient referrals of special population-eligible households for tenancy are received at the time of execution of the carryover agreement. PSH units must be rent- and income-restricted to 30% AMI and units may include project-based subsidy.

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

### 15. 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 completed by a market analyst approved by DSHA (see approved list) and submitted with the application. Requirements of the market study can be found at the following link: [http://www.destatehousing.com/Developers/lihtc/2023/2023\\_downloads.php](http://www.destatehousing.com/Developers/lihtc/2023/2023_downloads.php). The market study must be conducted within six (6) 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.

### 16. Development Team

Developments must be sponsored by a team that has development, construction, and management experience. 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 (as determined by DSHA) needed to successfully undertake, complete, and operate the development. Members of the development team may be required to provide documentation that services will be provided during all phases of the development. DSHA reserves the right to determine “satisfactory” development experience.

The members of the team, in addition to the developer and management entity, include the applicant/owner, co-developer, development consultant, owner, architect, surveyor, real estate, and tax counsel. The entire Development Team must be disclosed at time of application. Substitutions of

application Development Team members any time after allocation must be approved by DSHA. If a General Contractor is selected and included as part of the application, the General Contractor is also considered part of the Development Team. Substitution of the General Contractor post-application must follow the rules as established in DSHA's Minimum Design and Construction Standards found here: [http://www.destatehousing.com/Developers/lihtc/2023/2023\\_qap\\_guidelines.pdf](http://www.destatehousing.com/Developers/lihtc/2023/2023_qap_guidelines.pdf)

Applicants must provide an audited financial statement dated within 12 months of the application deadline, plus an interim balance sheet dated within 6 months of the application deadline, and a statement from the applicant's chief executive or operating officer and the chief financial officer stating that the balance sheet fairly presents the financial position of the applicant to the best of each person's knowledge and belief. Applicant must have net liquid assets equal to a minimum of 3% of the permanent mortgage loans of the proposed development, as well as any mortgage loans for developments previously approved but not yet placed in service.

This percentage is calculated as follows:  $\text{Net Liquid Assets} / (\text{permanent mortgage loans of proposed development} + \text{permanent mortgage loans of not yet placed in service projects}) > .029$

If this requirement cannot be met, the applicant may provide confirmation from the equity provider of its acceptance of applicant's financial capabilities. Please see Checklist of Exhibits.

Development team members including Applicant, Owner, and Development Consultant (as applicable) must complete and submit the form litigation disclosure. DSHA reserves the right to bar any member of the development team, including the sponsor, on the basis of substantial litigation exposure which exposes either risk to the financial soundness of the organization or raises concerns about the organization's competency.

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 been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that DSHA did not approve in writing beforehand;
- e. Have a general partner, voting member, developer, related party, or affiliated entity that owns any interest whatsoever, including general, limited general, or limited partnership 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;
- f. Developer that shares an Identity of Interest or is a Related Entity that:
  - Has not closed their first DSHA LIHTC 9% allocation (regardless of the allocation year); or

- Has two active Delaware LIHTC allocations. Active allocations are defined as developments that have not received final DSHA approval of both the Contractor and Mortgagor Cost Certification. Cost Certifications must comply with all DSHA stated policies and procedures. This exclusion applies equally to Identity of Interest and Related Entities of the Applicant. Appropriate documentation to confirm compliance with aforementioned items (i) and/or (ii) must be submitted to DSHA prior to the application deadline. Failure to meet this deadline will result in the application being deemed ineligible.

Entities acting as a Development Consultant are limited to two (2) active allocations (as defined above). Developers that also serve as a Development Consultant are limited to two (2) active allocations regardless of serving as a Developer or Development Consultant.

- g. Have failed to fulfill any obligations committed to in a previous LIHTC application that has not been corrected to DSHA's satisfaction. Such obligations include, but are not limited to, substantial design changes, failure to build project as represented, failure to provide the minimum DSHA Design and Construction Standards, exceeds proposed cost per unit, failure to implement waivers, and/or termination of credits by DSHA;
- h. 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; and/or
- i. Have any development that is not complying with its Declaration of Restrictive Covenant Provision and/or DSHA Regulatory Agreement, including, but not limited to, not providing social service commitments, additional income restrictions, Section 811 participation, elderly preferences, public housing waiting lists, the commitment to renew housing assistance contracts, energy benchmarking, and non-compliance of DSHA financing (HDF, ARHP, HOME, NHTF) regulatory agreement matters.

No waivers will be permitted in the Development Team section.

### **17. Site Control**

Applicants 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, and must remain valid for a minimum of six months subsequent to the tax credit application deadline. DSHA reserves the right to determine a development is ineligible to compete for Tax Credits where site control documentation is amended after application.

Applicants that have secured, applied for, or may apply for federal funding for a development or subsequent phase of a development must make all site control documents contingent upon completion of a satisfactory environmental review in accordance with federal guidelines.

### **18. Local Zoning/Planning Approvals**

Applicants must submit documentation describing the status of the following approvals and demonstrate that such status does not jeopardize the timely utilization of credits.

- a. Zoning and Site Plan- If variance or exception is required, applicants must provide documentation from the municipalities' legal counsel illustrating the present status of the proposed zoning

change, description of the local planning and zoning process, a timeline for approval and must submit evidence that appropriate approval can be obtained prior to timely closing.

- b. If no zoning or site plan approval is required, applicant must submit evidence of such.

**19. Public Housing and Section 8 Waiting Lists and [DelawareHousingSearch.org](http://www.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. Applicants, if awarded credits, must agree to list and maintain their development data on [www.delawarehousingsearch.org](http://www.delawarehousingsearch.org)

**20. Financial Feasibility**

Applicants shall provide one financing plan for the proposed development and shall demonstrate that the proposed development will remain 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 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, financing 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, the Leveraging of Non-DSHA Administered Resources and if applicable, the Readiness points categories.

Commitment letters or contracts for public and private financing subsidies are required for points in the Leveraging of Non-DSHA Administered Resources and/or the Readiness 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.)

**21. Minimum Design and Construction/Rehabilitation Requirements**

All developments must adhere to DSHA’s Minimum Design and Construction/Rehabilitation Standards (“Design and Construction Standards”) 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 as provided in the Design and Construction Standards must be fully completed for rehabilitation projects.

Resilience Evaluation will be required as part of the Application. Project teams must prepare a **resilience evaluation** that will provide site information and strategies the applicant is using to address various resilience issues (flooding, excessive heat, backup power). Applicants must use DSHA’s Resiliency Assessment Tool to meet this requirement located at the following link

[http://destatehousing.com/Developers/lihtc/2023/2023\\_exhibit46\\_resiliency\\_assessment.xlsm](http://destatehousing.com/Developers/lihtc/2023/2023_exhibit46_resiliency_assessment.xlsm)

Any member of the architectural design team may complete the resilience evaluation. Additional costs to implement one of the following resilient strategies as part of a capital improvements at a property identified as higher-risk by the Assessment Tool should indicate whether outside grants could be utilized ahead of DSHA resources.

1. Dry Floodproofing (Building)
2. Backwater Valves
3. Component Protection Floodproofing
4. Elevated Equipment

5. Maintaining Backup Power to Critical Systems
6. Develop Emergency Management Manual
7. Properly Vent or Eliminate Combustion Appliances
8. Creating Community Resiliency Hub

For the health and safety of the residents, DSHA requires that all mechanical, electrical, and plumbing systems (collectively the “building systems”) in developments that are 15 years old or older be updated to meet the current building code requirements of the governing municipality. A waiver may be granted if the project engineer of record provides a written assessment (with supporting system modeling) that the current building systems are sufficient to support all proposed updates for the compliance period.

The Design and Construction/Rehabilitation Standards are available here:  
[www.destatehousing.com/Developers/lihtc/2023/2023\\_qap\\_guidelines.pdf](http://www.destatehousing.com/Developers/lihtc/2023/2023_qap_guidelines.pdf)

Penalty points may be assessed to applicants who did not adhere to the Design and Construction/Rehabilitation standards on previous projects.

#### **22. Internal Revenue Form 8821**

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

#### **23. Rehabilitation and Uniform Relocation Act Projects**

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.

#### **24. All Non-Smoking Buildings and Units**

The non-smoking policy will prohibit tobacco products in all units, indoor common areas 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.

#### **25. Violence Against Women Act (VAWA):**

All owners and property managers must include the following protections in all LIHTC leases or execute a lease addendum which provides the following protections:

1. Tenant's status as a victim (past or present) of domestic violence, dating violence or stalking, or criminal activity directly relating to abuse engaged in by a member of a tenant's household or any guest or other person under the tenant's control is not grounds to be considered serious or repeated violation of the lease and does not constitute “good cause” for termination of assistance, tenancy, or occupancy rights of the victim of abuse;
2. The Landlord may request in writing that the victim, or a family member on the victim's behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066, or other documentation as permissible under VAWA, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under VAWA. Failure to provide the certification or alternative supporting

documentation as permissible under VAWA within the specified timeframe may result in eviction if good cause exists; and

3. Upon appropriate Certification, Tenant may be eligible to request lease bifurcation or an emergency transfer as applicable and appropriate and provided for by the Violence Against Women Act.

## **26. Environmental Threshold**

Any application that includes federal financing must demonstrate the ability to comply with all related federal environmental regulations, including, but not limited to, the Environmental Records Review.

Any application that includes buildings, structures, roads or other parking areas, that fails to avoid any of the following will be deemed ineligible to compete;

- Prime farmland (Zone 4 - State Strategies for Policy and Spending);
- Wetland;
- Non-Remediated Superfund;
- Land that is specifically identified as habitat for any species on federal or state threatened or endangered lists;
- Land or soil that is not suitable for building and not appropriate for remediation; and
- 100- year or 500-year flood zones (with exception for Preservation developments).

Compliance must be verified through the environmental assessment or environmental audit and detailed site map.

Additionally, the architectural design team must complete the resiliency assessment and submit proposed resiliency strategies with LIHTC application.

## **27. Utility Benchmarking**

Applicant must certify that it will use a utility benchmarking service for all owner-paid utility accounts and a sample of tenant-paid utility accounts for a minimum of fifteen (15) years. At all times, the utility data tracked by the service shall be updated continuously and be no more than twelve (12) months old. The applicant/owner must use the process as defined in the utility benchmarking attachments and make all information accessible to DSHA annually and upon request.

## **28. Minimum Point Score**

Competitive applications that meet the minimum threshold requirements will be scored and ranked based on the point system for the particular pool in which they compete. Tax-exempt bond financed applications that meet minimum threshold requirements will be scored to ensure that they meet the minimum required score.

All applications for 9% competitive credit must score a minimum of one hundred (100) points to be eligible for an award of tax credits. Applicants for 4% non-competitive credit must score a minimum of seventy-five (75) points to be eligible for an award of tax credit.

## Scoring and Ranking

### General Information

If DSHA determines that an applicant failed to fulfill representations made in an application or Carryover Allocation from a previous year's tax credit authority, DSHA may impose a penalty against the applicant in a subsequent LIHTC application submission. Before such action is taken, DSHA will notify the applicant of the necessary corrective action. If the applicant has not submitted written proof of corrective action acceptable to DSHA by the time of application, points will be deducted from the applicant's subsequent application equal to the amount of points deemed ineligible in the previous application.

The total possible points that can be awarded are 233 with bonus points available upon qualification. The points are divided into 5 separate categories for the development and team.

### DEVELOPMENT CHARACTERISTICS

55 possible points

#### Increase in Extended Use Period

(0-15 points)

For increases beyond the initial thirty (30)-year extended use period, five (5) additional points will be awarded for each additional five (5) year period the applicant agrees to extend the extended use period (up to an additional 15 years). Applicants that agree to an increase in the extended use period will not be permitted to re-syndicate prior to the initial 30-year extended use period.

OR

Ten (10) points will be awarded to developments that will be converted to homeownership 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 granted by the owner to the residents. Units must be offered at fair market value at the time of the original resident's initial occupancy of the unit. Total per unit cost 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 to home ownership.

#### Preservation

(1-10 points)

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

Points	Preservation Factor
4	Requires hard costs that exceed \$65,000 per unit
2	Have committed federal rental assistance contracts
3	Projects <u>have not</u> been syndicated with LIHTC prior to 1990*
2	Property is a family development
2	Projects are located in Kent and/or Sussex Counties

\* Projects are only eligible for these points if the project has never been syndicated with LIHTC or was initially syndicated prior to 1990.



For this category, hard costs include only housing units and must be documented by the Capital Needs Assessment. Costs considered in the per unit minimum exclude offices, community rooms, storage and maintenance areas, separate laundry facilities, all exterior work not considered an integral part of the building or units, all site costs, and work not of a standard nature. Proposed rehabilitation work must be past its 50% life cycle (see Design and Construction Standards and Cost Summary tab of Pro forma).

**Development and Unit Amenities (0-15 points)**

All units must meet the Design and Construction/Rehabilitation Standards established by DSHA. A maximum of fifteen (15) points will be awarded to those developments that exceed the Design and Construction/Rehabilitation Standards. Eligibility for points will be based upon 100% of all units benefiting from such amenities. Points will be awarded as follows:

- 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 residents' access (separate points will not be awarded for computer and/or business centers); **5 points**
- Resilience hub: A resilience hub is an above grade space with a kitchen, bathrooms, water fountain, and access to back-up power for heating, cooling, refrigeration and phone charging. Back-up power may be a generator or solar PV + battery storage system. Enhancements to existing or newly constructed community centers is acceptable; **3 points**
- Private Outdoor space: The space shall be directly associated with each dwelling unit, may occur as an entranceway (covered porch), an outdoor patio or fenced in area, balcony, or other definable space. Access shall be from the interior and limited to 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; **3 points**
- WIFI for all units: Initial installation and equipment must be part of the project's base construction costs. The monthly fee can be paid by operations and should be included in the annual operating budget; **2 points**
- Washer and Dryers in units; **2 points**
- For senior properties, regular (at least 3 times a week), site-provided bus service for residents for shopping, appointments, etc. Associated costs may be paid for by the project and should be reflected in the operating budget; **2 points**
- Design accessories such as decorative door surrounds, larger window trim, corner eaves, cornice and column details, or other special features; **2 points**
- Self-service delivery lockers for package deliveries (must be located on-site); **2 points**
- Exercise and/or walking trails with permanent surface; **1 point**
- Ceiling fans: Must be Energy-Star compliant and provided in all bedrooms and living room areas. One point will be given no matter how many fans are in the unit; **1 point**

- Microwave or micro-hood combination; **1 point**
- Trash chutes (for mid- or high-rise facilities); **1 point**
- Raised garden plots served by a water stand pipe for watering plants 50 sq. ft. per plot, 24 inches deep, one plot per 10 residents); and **1 point**
- Gazebo (100 sq. ft.; door must accommodate a 36” minimum clear opening and be fully ADA accessible. **1 point**

Prior to the application deadline, Applicants may propose amenities (in writing) in addition to those listed and may, at DSHA’s sole discretion, receive points. The development and unit amenities must be supported and documented in a chart format as part of the Market Study requirements or from the Architect as part of the Exhibit for this point category. Amenities must be new to the development, not existing, to be eligible for points. For phased or non-contiguous properties, the same amenities must be provided at each property in order to score points.

Failure to provide amenities for which points have been awarded at any time during the compliance period will result in a penalty against the Applicant in a subsequent LIHTC application submission equal to the point(s) awarded that were deemed ineligible. Substitutions after application will be considered, but only if they achieve the same or greater than amount of points as originally elected.

**Provision of Social Services** **(0-5 points)**

DSHA is committed to assuring that owners provide a variety of services to residents of developments utilizing our resources. By providing a foundation of stable housing complemented with population-appropriate services to residents, quality of life is improved. In order to encourage the provision of such services, DSHA will award up to five (5) points to applicants that commit to providing certain qualified social services to the proposed development’s residents.

Scoring will be awarded as follows:

Points	Number of Qualified Social Services
2	1
3	2
5	3

The services must be distinct to qualify for the points. For example, a series of financial literacy classes, even on different topics would count as one service, or two nutrition classes, even if offered by different providers, would count for one point. Social services must be actively linked to residents and not simply provided to the community at large. They may be provided on site or off site.

Minimum service thresholds must be met for each service point sought, including:

1. The service must be provided to the development's residents for at least four (4) hours in every calendar quarter for a total of sixteen (16) hours per year;
2. Services must be provided free of charge to the tenants and be appropriate, available, and accessible;
3. Transportation must be provided for any off-site services; and
4. There must be procedures in place for documenting and tracking utilization and outcomes of services.

The application must include the following:

1. The cost and source to pay for the services, if any;
2. A Comprehensive Social Services Plan describing all services proposed that includes:
  - a. narrative describing the services to be provided;
  - b. a marketing plan;
  - c. the name and qualifications of any service organizations that will be utilized, including their history, capacity, and experience; and
  - d. the transportation plan for any off-site services, signed by the transportation provider and service provider, if applicable.
3. Separate DSHA Form MOUs or substantially-similar agreements for each service provider included in the Plan.

Services may include: Parenting Programs, Literacy Programs, Daycare, Job Training, Nutritional Programs, Financial Counseling, Transportation, Public Benefits Counseling – such as providing support to help tenants determine eligibility and apply for public benefits, and Exercise/Healthy Lifestyle. Additional social services may be approved in advance by DSHA.

Applicants receiving points in this category that subsequently fail to provide the social service at any time during the compliance period will receive penalty points in any future application equal to the points that were awarded that were deemed ineligible.

**Energy Conservation Measures** **(0-10 points)**

Up to ten (10) points may be awarded for projects that demonstrate a comprehensive and innovative approach to energy conservation, green building performance, and resiliency that meets and exceeds the DSHA Base Level Energy and Green Standards. DSHA is committed to a flexible policy on energy conservation and multiple certification options are provided to allow flexibility for rehabilitation and new construction projects to demonstrate improved performance using the method the applicant judges to be most cost effective. Detailed standards and applicable points are described in Exhibit 32 and the certification is available at the following link:

[http://www.destatehousing.com/Developers/lihtc/2023/2023\\_exhibit32\\_energy\\_conservation\\_measures.docx](http://www.destatehousing.com/Developers/lihtc/2023/2023_exhibit32_energy_conservation_measures.docx)

The following chart is provided for informational purposes; final point scoring will be based on the criteria contained in Exhibit 32.

<b>Base THREE Points:</b>	Enterprise Green Communities 2020	National Green Building Standards 2020	LEED for Homes Multifamily Including both: LEED BD+C: for Homes and Multifamily Low-rise, and LEED BD+C: Multifamily Midrise
<b>Intermediate TWO Additional Points*:</b>	For New Construction: Passive House certification <i>or</i> DOE Zero Energy Ready Home		For Acquisition/Rehabilitation: HERS index rating of 70 or less
<b>Advanced THREE Additional Points**:</b>	Integrative Design and Operating Energy	Resilient Construction	Building Design and Construction Certification
* Only eligible for these points if a base energy criterium is elected.			
** Only eligible for these points if a base energy criterium and intermediate criterium is elected.			

Rehabilitation projects that utilize gas appliances and mechanical systems may be eligible for up to two (2) additional points if they agree to convert to all electric systems as part of the renovation work.

## COMMUNITY IMPACT

54 possible points

### Promoting Balanced Housing Opportunities

(0-20 points)

In order to balance housing investments and encourage the creation of affordable housing opportunities within areas of the State that contain little or no affordable rental housing opportunities but may offer economic opportunity, proximity to workplaces, high performing schools, and/or supportive infrastructure, points will be awarded to family development proposals located in Areas of Opportunity. Developments can be New Creation or Preservation and points will be awarded as follows:

Points	% of Units Located in Area of Opportunity
0	0%-49.9% of Total Units
7	50%-99.9% of Total Units
15	100% of Total Units

New Creation developments in Eastern Sussex are eligible for additional five (5) points.

<https://arcg.is/0GXD8j0>

### **Community Revitalization, Opportunity Zones, and Downtown Development Districts (0-7 points)**

DSHA is committed to supporting community revitalization efforts. In order to further this purpose, developments located in Qualified Census Tracts (QCT) that contribute to an eligible Concerted Community Revitalization Plan (CCRP) will receive five (5) points. No points will be awarded in this category to projects located in QCTs that do not contribute to an eligible CCRP.

Where all of a proposed development's buildings and parcels are located within a certified Downtown Development District (DDD) or a designated Opportunity Zone (OZ) and contribute to an eligible CCRP, the application will receive five (5) points. Any development where all buildings and parcels are located within a certified DDD or designated OZ will receive a minimum of two (2) points irrespective of its contribution to an eligible CCRP. A site map locating the QCT, DDD, or OZ must be included in the application.

Applicants seeking points for contributing to a CCRP must demonstrate that the development and/or physical location are clearly identified and included in an eligible CCRP and contribute to goals identified in the CCRP. Applicants should include the page number of the relevant portion of the CCRP and a description of the project's contribution to the CCRP. Applicants demonstrating weak or vague contribution to the CCRP will not receive points. The Plan must be certified as a true and correct version of the plan by the author. The entire CCRP must be submitted in the application.

### **Site and Neighborhood Standards (0-17 points)**

Up to seventeen (17) points will be awarded to developments that can demonstrate overall quality of location, access to services and transit, and protection of the environment. The market study must support each amenity of the sites and neighborhood standards claimed.

Site and Neighborhood scores will be based on the following factors. DSHA may remove an application from consideration if the site is sufficiently inadequate in any one of the categories. Evaluation of Sites and Neighborhoods will be made based on submission of market study, site maps, applicant explanation, applicant's additional documentation, and DSHA site visit.

#### **A. Access to Transit (0-5 points)**

A development will be awarded (0-5) points for including development amenities and facilities to accommodate public transit options. To score these points, applicant must demonstrate the site is transit ready and is providing new public transit infrastructure and/or amenities. Process and procedures for demonstrating Access to Transit are described with particularity in the Access to Transit Certification in Exhibit 24. Only the Certification is required at application. A Memorandum of Agreement (MOA) with Delaware Transportation Corporation will be executed as part of the carryover requirements after a preliminary reservation of tax credits are awarded and after DSHA review and approval. If the MOA is finalized, executed, or otherwise submitted in any form other than draft, applicant will not be eligible for points.

<u>Area</u>	<u>Transit Activity*</u>	<u>Points</u>
New Castle County	Existing Bus Stop <i>plus</i> Improvements	3
Kent and Sussex County	Existing Bus Stop on Emerging Routes in Areas of Opportunities <i>plus</i> Improvements	5
	Existing Bus Stop <i>plus</i> Improvements	3

\* All transit activity must be located on-site or adjacent to the perimeter of the property line. Improvements are defined as being in addition to providing a bus stop pad.

**NOTE: only two (2) properties per Developer may be submitted to DTC for 2024. The deadline for submission to DTC will be February 9, 2024**

All Access to Transit certification requests must be sent via e-mail to Dooley, David (DeIDOT) [David.Dooley@delaware.gov](mailto:David.Dooley@delaware.gov) with the subject line: LIHTC 2024 - Access to Transit Certification Request

Delaware Transit Contact Information:

David Dooley

Senior Service Development Planner

Delaware Transit Corporation/DeIDOT

119 Lower Beech Street, Suite 100

Wilmington, DE 19805-4440

Phone: (302) 576-6064

E-mail: [david.dooley@delaware.gov](mailto:david.dooley@delaware.gov)

B. Amenities (up to 12 points)

For projects located in municipalities and incorporated areas, the amenity must be within the noted radius of the project to be eligible for points. For projects located in unincorporated areas of the State or USDA designated rural areas (whether incorporated or unincorporated), including New Castle, Kent, and Sussex Counties, services must be 1.5 x of the noted radius of the project.

USDA designated rural areas can be found at the following link:

[2022 USDA Eligibility Map with Rural Property Requirements \(neighborsbank.com\)](https://www.neighborsbank.com/2022-usda-eligibility-map-with-rural-property-requirements)

Distance must be measured along an existing right of way; exact distances from project entrance must be referenced for each amenity claimed. At least one picture should be submitted for each amenity claimed. Amenities must be noted in the market study with distances documented. Applicants may only score once for each amenity; for example, if there is a grocery store within .5 mile of the project and a second store within 1 mile of the project, the applicant will score 3, not 5 points.

Negative points will only be deducted from points earned in the Amenities category and will not reduce the base score for the application. Nothing in this category alters or waives threshold siting or environmental criteria. For this Amenities category, half points will be rounded down and only full points will be included in final application scoring.

Amenities	Distance measured along existing right of way	
	≤ .5	≤ 1
Grocery of at least 10,000 sq. ft. and sufficient food to maintain daily food consumption	3	2
Walk-in medical facility / hospital	3	2
Walk / Bike Trail	2	1
Pharmacy	2	1
Child Care (family) / Senior Center (senior)	2	1
Public School (family sites only)	2	1
Library	2	1
Park	2	1
Central Business Districts*	2	1
Community, civic, or town center open to public	2	1
Fixed Route Transit Stop	2	1
Bank Branch	1	.5
Department or clothing store	1	.5
Hardware Store	1	.5
Post Office	1	.5
Public Indoor Fitness Center	1	.5
Community facilities: place of worship, community garden, cultural arts, police, or fire station	1	.5
	Distance measured as radius	
	≤ .25	≤ .5
Public Airport	-3	-2
Active landfill / dump / junkyard	-3	-2
Jail, prison, or detention center	-2	-1
Railroad	-2	-1
Heavy Industry	-2	-1

\*Central Business District as defined by the Office of State Planning

## **Community Compatibility**

**(0-14 points)**

Up to fourteen (14) points will be awarded to developments that can demonstrate overall community compatibility. Each factor of the community compatibility should be demonstrated through the DSHA site visit, site plan, market study, and other applicable documents. In order for preservation / rehabilitation to score in the Community Design category, any requested features must be new. Projects may score in all categories but will not receive more than twelve (12) points total.

### **Community Connectivity (3 points)**

Developments may receive three (3) points for design that relates to and encourages connectivity with the surrounding community. The project must demonstrate, through a sitemap, that sidewalks and other all-weather pathways are independent of the street or highway edge, 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. All pathways must be fully-accessible and ADA compliant.

Existing and/or infill sites that use existing sidewalks to demonstrate community connectivity will only be eligible for one (1) point. These sites may be eligible for up to an additional two (2) points if improvements to the existing sidewalks (such as cross walks or depressed curbs) are included in the development plans.

In order to be eligible for 3 points, applicant must communicate with DelDOT for technical assistance and provide documentation of such technical assistance. Written requests to DelDOT must include the following documentation of connectivity:

- Site plan from architect that demonstrates connectivity
- A narrative of your project that also includes how your project meets the connectivity requirement of DSHA
- Pictures of the property, including Ariel photos from Google Earth or other software

E-mail requests must be submitted to DelDOT by **February 9, 2024**. All requests must be made to:

**Karen Marvel**

[Karen.Marvel@delaware.gov](mailto:Karen.Marvel@delaware.gov)

**302-760-2122**

**Division of Planning**

**Delaware Department of Transportation**

### **Residential Appropriateness (up to 5 points)**

It is DSHA policy to promote high quality, visible projects that support strong communities, discourage residential sprawl, and do not isolate residents. Projects may receive up to 5 points based on application submissions. Factors that may be considered include, but are not limited to:

- Project is contiguous to existing Developed Land >25% must border existing developed land;
- Project qualifies as an Infill development;
- Potential tenants’ ability to participate in existing, active community or civic associations;
- Biking paths or walking trails connected to the property; and
- Documentation of collaboration with DTC para transit or commuter solutions.
-



## Community Design (up to 10 points)

The proposed design should reflect compatibility with the surrounding streetscape and enhancement of the visual character of the surrounding area as well as foster creativity. Preservation projects may score in this category to the extent that design features are added or improved over current property. Applicants cannot score in this category if they do not score at least three (3) points in the residential appropriateness category. One (1) point each, up to a maximum of ten (10) 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 details such as trim, materials, and color that enhances the exterior quality and interest of the project;
- Amenities such as porches, railings, and other exterior features.
- Detail to design and planning, including full height brick, stone, articulations in the facades, bay windows, and detail at the eaves and cornices;
- New and existing setbacks consistent with surrounding developments;
- Building heights and bulk, as seen from the street, are respected. The building should not look strange or out of place in the community where it is located;
- Development has a variety of bedroom sizes that include one, two, and/or three bedrooms. This promotes opportunities for various household sizes in a community;
- Landscaping in excess of community requirements;
- Design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections. Roof pitches that 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 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.

Value Engineering or change orders eliminating elements used to support scoring in this category will subject the applicant to proportional penalty points in future applications.

**Serving Lower-Income Residents (0-20 points)**

Up to twenty (20) points will be awarded based on the development’s average of AMI targeting calculated by bedroom. 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 down 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.

New Creation and Preservation Projects, except those incorporating mixed income/market rate units, may elect the Average Income approach to achieve the weighted overall average of AMI. Projects electing Average Income must have an Average AMI of Overall Project of less than or equal to 58%. Projects electing Average Income must do so at application and the election must be made on a project basis. No rents will be approved in excess of Fair Market Rent as published by HUD.

Preservation Projects (including all re-syndication projects) adjusting the AMI Unit mix must submit a plan identifying the current income of all tenants and projections for meeting the newly identified unit mix as part of the relocation plan. Current over-income tenants may be allocated to newly elected higher AMI units. In no event may rent increases for current tenants exceed 15% / year.

New Castle Kent, and Sussex

Points	Average AMI of Overall Project
20	< 40%
17	41-45%
14	46-50%
11	51-55%
9	56-58%
0	>58%

**NOTE:** For this calculation, DSHA will round down to the nearest percentage. For example, if the average AMI is 40.05%, DSHA will round down to 40%.

**Integrated Housing for Special Populations (0-10 points)**

Ten (10) points will be awarded to applicants who increase the number of target units set aside for special population-eligible units or Permanent Supportive Housing (PSH) to the greater of 10% **or 6 units** (units from the 5% threshold requirement will be counted toward the total percentage for scoring in this section). PSH units must be one-bedroom units. In order to score additional points, special population-eligible units must be designated for households with incomes no greater than 30% of AMI in one or more of the following categories:

- Persons with HIV/AIDS related illness;
- Literally or Imminently Homeless;
- Survivors of Domestic Violence (in accordance with Del. Code Title 13, § 703A) – this includes households fleeing or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking;
- Persons with Disabilities including persons with mental illness; persons with physical disabilities, and/or 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.

Other special-needs populations identified in DSHA’s Needs Assessment may be considered at DSHA’s sole discretion.

An agreement shall be in place between DSHA, the referring agency, and the owner to ensure sufficient tenancy referrals of special population-eligible households are received. DSHA developed a supportive-housing referral system that must be utilized by all applicants, except for PSH units, to obtain referrals of special population-eligible households connected to supportive services. PSH referrals will come through DDDS and support services will be provided by a local service provider contracted with DDDS. NOTE: the benefit of electing the PSH option includes the additional rental subsidy. Failure to secure the supportive services will result in removal of the rental subsidy and will require that the elected set-aside will revert to the Target Unit referral system.

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 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 fully accessible 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 said household to transfer to the next available 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 the Target Unit's AMI or below. The next available unit in the Project at the Target Unit's AMI shall be marketed to the Project’s original targeted population until the project is in compliance with the 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.

**Additional Fully Accessible Units (0-5 points)**

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

<u>Area</u>	<u>Percentage of Fully Accessible Units</u>	<u>Points</u>
New Castle County	10%	3
	15%	5
Kent and Sussex County	10%	3

Accessible units should be marketed and rented to households that need the accessible features. Applicants seeking points for additional fully accessible units must submit an accessibility outreach and marketing agreement describing marketing and outreach efforts to the disability's community. The agreement may be in draft form at application, and is required to be executed as a condition to closing. The agreement must be included in Exhibit 31 and include, at minimum:

- 1) A detailed description of property, including address, amenities, contact information, and unit mix;
- 2) The number and description of fully accessible units in property;
- 3) The fully Accessible Unit Target Income and Rents schedule;
- 4) A form of Lease;
- 5) The Property Management Agent signatory; and
- 6) The Signatory of at least one disabilities service provider.

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 said household to transfer to the next available unit (of comparable or smaller size) when a household that needs the accessible features applies and is accepted to the development. Fully accessible units must not be concentrated in a given area (i.e. segregated to only one floor, building, or section of the development).

Applicants are required to list their development and all accessible units on the following site: [www.delawarehousingsearch.org](http://www.delawarehousingsearch.org).

**Mixed Income/Market Rate****(0-10 points)**

Up to ten (10) points will be awarded as provided below to a development where the percentage of units based on the total units in the development are market rate and not rent-restricted or income-restricted. For applicants requesting HDF or other DSHA financing, the project must demonstrate sufficient non-restricted financing to support the costs of the claimed market rate units.

Points	Percentage of unsubsidized Units Neither Income nor Rent restricted
2	10%
4	15%
6	20%
8	25%
10	30%

**USE OF RESOURCES****38 possible points****Cost Balance****(0-15) points**

While maintaining aesthetic and livability standards, it is DSHA's objective to fund as many applications as possible. The cost per unit is, therefore, an important factor in analyzing applications, as well as a required consideration for subsidy layering. In an effort to balance the cost of the total development, DSHA will award projects that can also balance the soft and hard costs with an emphasis on construction costs.

All projects must meet DSHA's Design and Construction/Rehabilitation Standards. For new construction projects located in an Area of Opportunity, the Land costs supported by the application appraisal may be removed from the Total Development Costs for this category only.

Up to fifteen (15) points will be awarded to developments whose Total Construction Costs, as calculated in the Use of Funds tab of the DSHA Pro Forma, meet the below defined percentages of DSHA TDC calculated by  $[(\text{Construction Costs}) / (\text{TDC} - \text{Land Costs})] * 100$ .

Cost Balance		
Project Type	Construction / TDC	Point Escalator
<b>New Construction</b>	Greater than or equal to 67%	1 point every 1.5% over 67%
<b>Acquisition/Rehabilitation/New Creation Rehabilitation Projects</b>	Greater than or equal to 50%	1 point every 1% over 50%

**Example for Cost Balance:**

For an acquisition / rehab application, with Total Construction Costs of \$5,400,000 and a Total Development Cost of \$10,000,000 would score 4 points.

$$(5,400,000 / 10,000,000) = 54\%$$

$$54\% - 50\% = 4\% \text{ difference}$$

$$4 / 1 = 4 \text{ points}$$

**Leveraging (0-10 points)**

Up to ten (10) points will be awarded for the leveraging of permanent funding sources not controlled by DSHA. DSHA-controlled funds include: HDF, Affordable Rental Housing Preservation (ARHP), DSHA HOME, and NHTF. Permanent financing from sources other than DSHA-controlled funds are considered leveraging (i.e., Private conventional lenders, USDA Rural Development [rolled debt or new], local municipality HOME funds, waiver of building permit fees, tax abatement, Section 202, Federal Home Loan Bank funding, local municipalities funds, foundations and other permanent sources, value of donated land or subsidized land leases). Existing project reserves not held by DSHA that are being used for eligible DSHA project costs will be considered for the leveraging calculation. Tax credit equity (including historic equity), deferred developer fee, are not considered permanent funding sources for the leveraging calculation.

**New Castle County**

**Kent and Sussex County**

% of Non-DSHA Permanent Sources	Points
81%-100%	10
71-80%	8
61-70%	6
51-60%	4
36-50%	2
0-35%	0

% of Non-DSHA Permanent Sources	Points
71-100%	10
61-70%	8
51-60%	6
36-50%	4
21-35%	2
0-20%	0

**NOTE:** For these calculations, DSHA will round down to the nearest percentage. DSHA fully amortizing first mortgages and DSHA interest-only mortgages are not included in this calculation. In the event of a change in the financing structure after application (including DSHA fully amortizing debt or interest-only debt cannot be attained), the leveraging will be recalculated and the application will be re-ranked accordingly or deemed ineligible. **Total permanent sources divided by sources other than DSHA = % of Non-DSHA Permanent Sources**

**New Rental Subsidies**

**(0-5 points)**

Five (5) points will be awarded to developments that have received an award of new project-based rental subsidies for at least 75% of the total affordable units in the development, excluding eligible unrestricted market rate units. Transfers of existing contracts are not considered new subsidies.

**Historic Housing**

**(0-5 points)**

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, all buildings on the property must already be on the National Historic Register at the time of application. If a property is located within a historic district listed on the National Historic Register, the entire property, including all buildings, must be deemed as ‘contributing to the significance of the historic district’ and supporting documentation must be provided. In addition, the applicant must obtain a letter from the State Historic Preservation Office that all buildings in the development are eligible and that state credits will be available by conversion. For projects where less than 100% and greater than 50% of units are eligible as described above, two (2) points will be awarded.

**DEVELOPMENT TEAM**

**37 possible points**

**Minority-Owned/Women-Owned/Veteran-Owned/Service Disabled Veterans-Owned/Individuals with Disabilities-Owned Business**

**(0-5 points)**

DSHA may award up to five (5) points for material participation in the development team by minority-owned businesses, woman-owned businesses, veteran-owned businesses, service disabled veteran-owned businesses and Individuals with Disabilities-owned businesses certified by the State of Delaware, Division of Supplier Diversity. <https://business.delaware.gov/osd/> Five (5) points will be awarded for the Development Entity/Developer/Applicant with a MBE/WBE/VBE/DBE business enterprise majority ownership stake. One (1) point for all other team members defined below:

<b>Firm/Entity</b>	<b>Points</b>
Development Team Member (Owner/Developer/	5
Special Team Member (such as General Contractor, Architect, Management Agent, Engineering Firm(s), Cost Certification Accounting Firm or Security System Provider, or construction subcontractors)	1 (per eligible special member)

The application must list each entity as part of the development team and commit to the entity for two years up front. Each firm must have executed contracts at application. Team members cannot be replaced without DSHA consent and same points will be deducted on future applications.

**Sponsor Capacity**

**(0-10 points)**

Up to ten (10) points will be awarded based on exceptionally-demonstrated relevant experience and qualifications of the developer and management entity.

A. **General Partner/Developer<sup>3</sup> Experience:** Up to ten (10) points shall be awarded based on the number of Low Income Housing Tax Credit Properties successfully developed by the general partner and/or developer that have maintained financial stability throughout operation.

2- 4 developments in service less than 3 years	3 points
2-4 developments in service more than 3 years	5 points
5 or more developments in service less than 3 years	7 points
5 or more developments in service more than 3 years	10 points

Note: Allocations made after 2020 and forward, 2 points will be deducted for any General Partner/Developer team who has returned credits to or received a forward reservation from DSHA in the past two credit years, unless otherwise approved by DSHA.

To receive points for developments in service for more than 3 years, the applicant must submit a certification from a certified public accountant that the projects for which it is requesting points has maintained a positive operating cash flow from typical residential income for the year in which each development’s last financial statement has been prepared, and have funded reserves in accordance with the partnership agreement and any applicable loan documents.

If a consultant’s experience is being utilized to qualify for points, a signed agreement and/or contract for substantial services (as described under the definition for Consultant) describing the role each entity will play in the development and/or the management of the development must be provided.

**Management Agent’s Experience and Performance**

**(0-15 points)**

Up to twelve (12) points will be awarded based on the number of completed and occupied Low Income Housing Tax Credit and subsidized developments currently being managed.

1- 4 developments	1 point
5-15 developments	3 points
More than 15 developments	5 points

Limited English Proficiency – Two (2) points will be awarded to Management Agents who can document that rental applications, leases and other management documents are available in Spanish and other languages for non-English speaking applicants and residents. Management policies must indicate that applications are available for households without computer access.

NOTE: All Management Agents selected at application must remain the Management Agent for a minimum of four (4) years after permanent closing. If a Management Agent change is made that is not at the direction of DSHA, the Limited Partner/Investor Member, or HUD/USDA (if applicable), the same amount of points received for this application will be deducted on the next submitted application.

<sup>3</sup> “General Partner/Developer” is defined as a corporate entity, partner or owner of a multi-family development company that has been a signatory/guarantor on a Tax Credit construction loan.



Up to five (5) points will be awarded for Management Agents with portfolios containing Delaware Section 811 contracts and Target Units. Points will be awarded based on the percentage of 811 units under contract or Target Units occupied by qualified tenants.

65-80% occupied by qualified tenants	2 points
>80% occupied by qualified tenants	5 points

The Management Agent will not be awarded points if one or more of the following occur in the Management Agent's overall portfolio in the previous calendar year:

1. More than 1% of Management Agent's portfolio is currently subject to an unresolved Form 8823, "Low Income Housing Tax Credit Agencies Report of Noncompliance" or Regulatory Non-compliance matters;
2. An average REAC score of seventy-nine (79) or below; or
3. The average vacancy loss for five (5) or more properties housing the same type of residents (e.g., family, elderly) in the Delaware portfolio is 7% or more.
4. If Management Agent's portfolio contains 811 contracts and less than 30% of said units under contract are filled with qualified tenants.

Please refer to the Exhibit checklist for documentation of the above factors.

Up to three (3) points will be awarded to Management Agents that can provide documentation of all social services in place for all developments awarded tax credits that includes tracking utilization and outcomes of social services. Please see Applicant Detailed Checklist.

### **Readiness to Proceed**

**(0-10 Points)**

With its limited resources, DSHA supports development proposals that can quickly and efficiently create and preserve affordable rental housing opportunities for Delawareans. To this end, up to ten (10) points are available to applicants that can demonstrate the following:

Applicant may receive three points (3) each for the following demonstrated and documented at the time of application:

- a. 80% Plans and Specifications;
- b. Final Zoning Approvals;
- c. Local municipality design and/or site plan final approvals;
- d. DNREC final approvals;
- e. DelDOT final approvals; and
- f. Allocations received in 2021 or forward that construction closed by the initial carryover deadline;

**NOTE:** If an item is not applicable, it is not eligible for points.

## BONUS POINTS

Recognizing that the goal of containing costs while achieving important public policies and creating the greatest number of affordable units for Delaware residents may compete with one another, DSHA will offer Bonus Points to those applications scoring at least ten (10) points in the Cost Balance point category and at least one of the categories listed below.

Applications that meet a minimum threshold of 10 points in Cost Balance and score in any of the below Eligible-Point Pools will receive a multiplier of 0.5 times the total points scored for a maximum of ten (10) bonus points. The calculation is as follows:

$$0.5 \times (\text{Cost Balance} + \text{Sum of all points earned in Eligible Point Pools}) = \text{Bonus Points}$$

Eligible Point Pools	
Promoting Balanced Housing Opportunities	Historic Housing
Energy Conservation Measures	Additional Fully Accessible Units
New Creation in Sussex County	New Creation Family Projects Serving Lower Income Residents < 40% AMI
Readiness to Proceed	

Bonus points are in addition to base points scored in eligible categories.

Example: An acquisition/rehabilitation proposal received 10 points in the Cost Balance category. The same proposal also received 10 points in balanced housing and 3 points in energy efficiency, earning a total of 9 bonus points:  $0.5 \times (5 + (10 + 3)) = 9$  bonus points

Scoring Summary

<b>Development Characteristics – 55 Possible Points</b>	
15	Increase in Extended Use Period
10	Preservation
15	Development and Unit Amenities
5	Provision of Social Services
10	Energy Conservation Measures
<b>Community Impact – 58 Possible Points</b>	
20	Promoting Balanced Housing Opportunities
7	Community Revitalization / DDD
17	Site and Neighborhood Standards
14	Community Compatibility
<b>Tenant Populations Served – 45 Possible Points</b>	
20	Serving Lower Income Residents
10	Integrated Housing for Special Populations
5	Additional Fully Accessible Units
10	Mixed Income
<b>Use of Resources – 40 Possible Points</b>	
15	Cost Balance
10	Leveraging
5	New Rental Subsidy
5	MBE/WBE/VBE/DVBE/IDBE
5	Historic Housing
<b>Development Team – 35 Possible Points</b>	
10	Sponsor Capacity
15	Management Experience and Performance
10	Readiness
<b>Bonus Points</b>	
Total = 233 points (Note: No application can achieve the maximum total points.)	
<b><i>Applications for competitive credit must score a minimum of 100 points. Applications for non-competitive credit must score a minimum of 75 points.</i></b>	

## **Tiebreakers**

In the event of a tie score, applications shall be ranked according to the tiebreaker system described below:

1. First, to the application located in the county that did not receive a competitive tax credit award in the last funding round; and
2. Second, to the application requesting the lowest amount of housing tax credits per low-income square foot.

If there is still a tie score after these tiebreakers, the application with the lower total development cost per square foot will prevail.

## **REVIEW AND SELECTION PROCESS**

Only developments that meet all federal and state program requirements and all minimum threshold requirements will be reviewed for a Preliminary Reservation of credits.

As required by Delaware Code, DSHA will notify the state representative, state senator, and 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 QAP 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 QAP with consideration for any penalty points imposed from previous application(s). Prior to making Preliminary Reservations in accordance with rankings pursuant to the QAP for the current year, DSHA shall reserve credits for developments which (i) received Forward Reservations of credits in previous years and (ii) as determined by DSHA, met the conditions of such Forward Reservation.

In accordance with federal requirements, a determination that the development's credit allocation does not exceed the amount necessary for the financial feasibility of the development and its viability as a qualified low-income housing development will be made at the time of Carryover Allocation and again at the time the development is placed in service. A development cannot receive a credit allocation in excess of the amount necessary to make the development financially feasible. Therefore, the amount of credit allocated to the development may change from initial credit preliminary reservation.

Should DSHA receive information that public or private financing subsidies have been denied, DSHA will review the information to determine the feasibility of the application and application review.

## State Basis Boost

DSHA reserves the exclusive right to award a state basis boost on eligible basis up to thirty percent (30%), as determined solely by DSHA, to applicants that target special needs populations and/or permanent supportive housing, family projects located in Areas of Opportunity as defined in DSHA's Balanced Housing Opportunities map, and/or to make projects financially feasible. This additional boost is not available for properties located in a Qualified Census Tract (QCT) or Difficult to Develop Area (DDA) since the QCT and DDA already qualify for an additional 30% boost and is not available to tax-exempt bond applicants. The state basis boost will only be awarded upon application or during underwriting and must be included in the cost certification. No applications will be accepted with a state basis boost included in the tax credit calculation, with the exception of units with permanent supportive housing or family projects located in Areas of Opportunity. DSHA will determine during the ranking/underwriting process if a state basis boost is needed for financial feasibility.

## 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 DSHA (Director). The highest-ranked application in each of the pools (nonprofit, preservation/rehabilitation/new creation) that meets all requirements of this QAP shall receive a Preliminary Reservation of credit. DSHA may, at its sole discretion, award unused credits in each pool to the next-highest ranking project, irrespective of which pool the project is in. An applicant may appeal DSHA's ranking decision by submitting a written request for reconsideration to the Director no later than fifteen (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 ninety (90) days of application deadline and submission, DSHA will notify applicants 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 a Carryover Allocation and the final allocation of credits.

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, market analysis, and DSHA's underwriting criteria, to determine if a development is not viable and/or feasible. If such determination is made, the application will be deemed ineligible.

During any period of the application review process or underwriting, more extensive reviews of the application 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 changes that affect its ranking, the application will be re-ranked accordingly or deemed ineligible.

Applicants using their own funds to fill a funding gap 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.

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 a Carryover Allocation of credits.

### **Preliminary Reservation and Pre-Carryover Allocation Requirements**

Upon ranking award decisions, DSHA will contact awardees with a preliminary reservation award. The preliminary reservation award is subject to amendment, change, cancelation, or modification based on DSHA's underwriting, satisfaction of conditions to carryover, and the timely finalization of financing commitments. DSHA will schedule a kick-off meeting to take place within 60 days of the preliminary award notice. The following requirements will be conditions of the preliminary reservation and execution of the carryover:

1. Mandatory attendance of the following Development Team members at the kick-off meeting:
  - Applicant;
  - Development Consultant;
  - Architect; and
  - General Contractor.
  
2. Satisfaction of the following conditions prior to executing the carryover agreement:
  - Applicable land use approvals or satisfactory progress in the approval process;
  - Evidence of equity investor final selection; and
  - Architect's submission of 80% Plans and Specifications in accordance with DSHA's Minimum Design and Construction Standards.
  - MOA with DTC
  - USDA transfer approval, as applicable

## Forward Commitments

DSHA reserves the right, at its sole discretion, to commit a portion of its credits for a year subsequent to the current year for a highly-ranked development that received only partial funding in the current year due solely to limited credit availability. DSHA's determination to make a Forward Commitment will be based on the amount of credits needed to demonstrate financial feasibility, readiness to proceed and other considerations deemed appropriate. The amount actually allocated in the subsequent year may be less than the amount forward committed, 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 complement of credits. Applicants will be responsible for maintaining compliance with all aspects of the program for the year the credits are actually allocated, including Placed in Service requirements.

DSHA's Director reserves the right to amend the Forward Commitment requirements at his/her sole discretion.

## Post Tax Credit Award Requirements

### DECLARATION OF RESTRICTIVE COVENANTS

All applicants must agree to a minimum thirty (30)-year low-income housing commitment for the development. The Declaration of Restrictive Covenants will reflect any longer compliance period committed to at application, and must be signed, recorded and returned to DSHA before the carryover allocation is awarded or the development 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 Allocation. 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, 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 does not represent or warranty that the amount of credit allocated is sufficient to make a development feasible or viable or that the development has complied or Allocation is executed., 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.

### Placed in Service Requirements

All developments receiving a Preliminary Reservation of credits must be placed in service either by November 1<sup>st</sup> of the year in which they receive Reservation or must receive a Carryover Allocation of credit prior to the end of the year in which they have received the Preliminary Reservation. In the event they receive a Carryover Allocation, they must have incurred more than 10% of reasonably-anticipated development costs, no more than twelve (12) months after the issuance of the Carryover Allocation.

By the close of the calendar year of the allocation or twelve (12) months from the date of the carryover allocation, owners must provide written certification from a certified public accountant that they have incurred expenditures for more than 10% of the reasonably-expected basis (the “10% Test”) of the development. Developments not adhering to this procedure or not meeting the above criteria will be subject to credit allocation revocation. Please refer to the DSHA Cost Certification and Draw Guide (the Guide) for additional information regarding the 10% Test requirements. **All projects must be placed in service by the end of the second calendar year following the year of allocation.**

### Final Closing and 8609 Requirements

DSHA will prepare and issue IRS Form(s) 8609 certifying the final amount of LIHTC allocated to each building in a project at the time the buildings are placed in service. The form is needed for the owner to claim LIHTC on the project. DSHA must receive the documentation specified below, as well as any additional documentation requested. As required by the Internal Revenue Code, DSHA will undertake a final evaluation of each project to determine the amount of LIHTC needed to make the project financially feasible.



While DSHA will use its best efforts to complete this review as soon as possible, owners are advised that the review process may take as long as sixty (60) days to complete. In addition, for projects with DSHA financing, IRS Form(s) 8609 will not be issued until permanent closing.

The following will be required for submission for issuance of the IRS 8609 forms

- **Final (DSHA approved) Cost Certification**
  - Please refer to the Guide for more information. The Guide and all cost certification forms are located at the following link:  
[http://destatehousing.com/Developers/developermedia/cost\\_cert\\_guide.pdf](http://destatehousing.com/Developers/developermedia/cost_cert_guide.pdf)
- **Date Project Placed in Service**
  - Certificate of Occupancy (CO) for each building
  - For rehabilitation projects, where the local municipality does not issue CO's or other approvals, substantial completion from the architect and DSHA's permission to occupy or other evidence acceptable to DSHA.
- **Documentation of all Permanent DSHA Loan Closing requirements, if applicable;**
  - Please refer to the Guide for more information.
- **Evidence of registration of property on [www.destatehousingsearch.org](http://www.destatehousingsearch.org)**
- **Evidence that all tenant data has been uploaded into DSHA's database system**

The above list is subject to change, and owners must obtain from DSHA the most current list of required documents pertaining to each individual project for proper and timely processing of IRS Form(s) 8609.

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

DSHA, at 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.

Such written documentation must:

1. Be submitted to DSHA 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;
2. 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
3. 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.

Notwithstanding any other restrictions in the Forward Reservations 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

consequence 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 for facts beyond the applicant's control and one year for financing commitment delays (i.e. USDA, equity partners) after the return of the credits. Any such priority will be conditioned upon the following:

1. A determination by DSHA that the development continues to be desirable in terms of meeting affordable housing needs;
2. The applicant's early return of any previously allocated credits;
3. Such other terms as are deemed appropriate under the circumstances by DSHA in its sole discretion; and
4. Requests for Forward Reservations will require a fee of \$15,000. The fee will be non-refundable, non-basis eligible, and must be paid prior to execution of the Forward Reservation.

Anything in the Forward Reservations section 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 credits within the year it is determined that the applicant will not be able to place the development in service, while awaiting the allocation from the next year.

The return of credits pursuant to this subsection will only be allowed one time and the development and applicant must comply with the current 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 once the development is placed in service and DSHA has received cost certification by the owner (mortgagor) and the general contractor of the development. A copy of the 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. See Underwriting Guidelines for more detailed information on the cost certification requirements.

## Post Tax Credit Award Documents

The following items must be submitted and approved during the underwriting process and prior to construction closing:

- DSHA Plans/Specifications Checklist**
- Department of Natural Resources and Environmental Control**  
Documentation regarding National Pollutant Discharge Elimination System, Notice of Intent
- National Emission Standard for Hazardous Air Pollutant**
- Erosion and Sedimentation Control Plan**
- DeIDOT Entrance Permit (if applicable)**
- Model Energy Code, Building Compliance**
- Fire Marshal Approval**
- Architectural Accessibility Board Approval**
- Site Plan with Easements Notated (ALTA)**
- Building Permit** (Include Fire Marshal approval of sprinkler and alarm design)
- Realty Transfer Tax, Title 30 §5401 (8) c** (see #9 at the following link:  
[http://www.destatehousing.com/Developers/lihtc/2018/2018\\_downloads.php](http://www.destatehousing.com/Developers/lihtc/2018/2018_downloads.php))

## Compliance Monitoring Procedures

DSHA has implemented monitoring regulations for the LIHTC program as required by the IRS, which includes compliance with Treasury Regulations Section 1.42-5 and in conjunction with all other funding sources allocated by DSHA. 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 has contracted with Spectrum Enterprises, Inc to perform compliance monitoring for the next two-year period. Spectrum will follow DSHA's Compliance Monitoring Procedures for Initial Review, Subsequent Reviews and Inspections. All other requirements of DSHA's Compliance Monitoring Procedures will also be applicable to all tax credit projects.

DSHA will perform annual on-site inspections of at least twenty percent (20%) of all LIHTC developments, including, but not limited to, properties utilizing HOME program, NHTF, HDF, Rural Rental Housing (RHS) Section 515, Section 8 Housing Assistance Payment Contracts (HAP), 811 PRA DEMO Rental Assistance Contracts (RAC), and tax-exempt bond-financed properties.

### Initial Review

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, in accordance with Treasury Regulations Section 1.42-5. DSHA may conduct an on-site review of 100% of the resident files. This review will consist of the low-income certification, the documentation the owner has received to support that certification, and the rent record for the tenants in those units.

### Subsequent Review

At least once every three (3) years, DSHA will conduct on-site inspections of all the buildings in each low-income housing development and, in accordance with Treasury Regulations Section 1.42-, 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 and/or the DSHA approved contractor will determine which low-income housing developments will be reviewed in a particular year, which residents' records will be reviewed, and which residents' units will be inspected.

For the purpose of a desk audit, DSHA may request an owner of a low-income housing development not selected for the review in a particular year to submit documentation of compliance and annual compliance reporting. Requested documentation may include, but is not limited to, the following: 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 the development.

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

## Inspections

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, which includes compliance with Treasury Regulation Section 1.42-6. 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 reserves the right to perform a general physical inspection of the building(s) if 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.

## Data Systems

DSHA requires all owners to use the MITAS Multifamily Software (an integral database system for all required tax credit data) for reporting purposes. DSHA is required to report all resident and project data (for all tax credit projects monitored by DSHA) to HUD annually. The format for annual reporting is established by HUD and must be completed by September of each year. All reporting data is obtained through the properties' monthly submission of the Tenant Income Certification (TIC).

HUD's LIHTC Tenant Data Collection requires each state credit allocating agency to provide HUD with information on the race, ethnicity, family composition, age, 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:

1. 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
2. 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.
3. At least forty percent (40%) or more (25% or more in the case of a project described in section 142(d) (6)) of the residential units in the project must be both rent restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the imputed income limitations designated must not be more than 60% of the area median gross income. The designated imputed income limitation of a unit can only be 30%, 40%, 50%, 60%, or 80% of the area median gross income. The average income test is only available for elections made after March 23, 2018.

The owner may select either (1) or (2) as a minimum set aside or a greater percentage, up to one hundred percent (100%). The election is made at the time of application and must be maintained throughout the compliance and extended use periods.

## DSHA Average Income Policy

The Internal Revenue Service (“IRS”) amended Section 42(g) of the Internal Revenue Code of 1986 to add a third federal minimum set-aside option an applicant (“Owner”) for LIHTC may elect for a proposed project to meet the definition of “qualified low-income housing project” (“development”). Owner may elect to satisfy the 20-50 test, the 40-60 test, or the new subsection specified as the Average Income test (“Income Averaging”). Income Averaging allows households with incomes of up to 80 percent of the Area Median Income (“AMI”) to qualify for LIHTC units, so long as the average of the imputed income limitations for a development, as a whole, does not exceed 60 percent of AMI. The minimum set-aside election is irrevocable once made on the Form 8609.

### Owner Requirements:

- Owners of developments with more than one building must elect on the Forms 8609 to treat all of them as part of a multiple building project (checking “Yes” on line 8b of the current form).
- Income Averaging Test:
  1. Under Income Averaging, a development meets the requirements of section 42(g)(1)(C) if 40 percent or more of the residential units in the development are:
    - i. rent restricted; and
    - ii. occupied by individuals whose income does not exceed the imputed income limitation designated by the applicant with respect to the respective unit.
  2. The average of the imputed income limitations, across the development as a whole, cannot exceed 60 percent of the area median gross income. DSHA may require a lower percentage for purposes of underwriting.
- DSHA will include the Federal Election and set-aside option described in detail in the recorded Declaration of Land Use Restrictions Covenants Relating to Low Income Housing Tax Credits.
- Income designations are permitted to “float”. For example, if at the time of Application, the Owner committed to a mix of 30%, 50%, 60% and 80% units with an overall income percentage of 60%, then throughout the affordability period (as long as the overall income percentages remains at or below 60%) the unit designations may be changed to any combination of 30%, 40%, 50%, 60%, and 80% units.
- Developments that are not comprised of 100% Low Income units, i.e. those including market rate units, will be required to complete annual re-certifications.
- Developments that are comprised of 100% Low Income units, including 80% units, will not be required to complete annual re-certifications. This policy could change if the IRS decides to require annual re-certifications.
- Owners must disperse 30%, 40%, 50%, 60%, and 80% units across unit types and sizes in a manner that does not violate Fair Housing.

- Projects using 4% tax credits/tax-exempt bond financing IRC Section 142 remains unchanged under the Act. A project subject to IRC Section 142 must still meet either the 20/50 or 40/60 minimum set-aside test. The project may elect average income for LIHTC as long as the unit mix selected will also meet the minimum set-aside test for bond compliance purposes.
- Properties seeking a re-syndication of credits are permitted to elect average income as a new minimum set-aside; however, the new election will not release the property from the affordability requirements defined in the original restrictive covenant. The original restrictive covenant, and its incorporated rent and income requirements, will remain in effect until the extended use period has ended. Owners re-syndicating will record a new restrictive covenant. During the period in which both restrictive covenants are in effect, the owner will have to comply with the more stringent rules applicable to each particular unit.
- DSHA reserves the right to disallow any clear skewing of unit designations. DSHA will require applicants to provide reasonable parity between different bedroom sizes at each targeted income band utilized on the property.
- Noncompliance will work the same as it does with the other minimum set-asides. If the Owner elects' income averaging and fails to meet the income averaging standard at the end of a calendar year, it is not a qualified low-income housing development for the year under IRC Section 42(g)(1)(C), and noncompliance must be reported to IRS Form 8823 and the owner could be subject to loss of Credits.
- DSHA will charge an additional \$250 per unit for electing the income averaging option.

## 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, sixty percent (60%) or less of the county gross median income based on family size, or may elect to Average Income whereby at least forty percent (40%) or more (25% or more in the case of a project described in section 142(d) (6)) of the residential units in the project must be both rent restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The average of the imputed income limitations designated must not be more than 60% of the area median gross income. 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:

1. Tenant name and social security identification numbers;
2. Family dependents and ages;

3. Gross income and asset information;
4. Sources of income; and
5. 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 (100%) 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:

1. The total number of residential rental units in the building (including the number of bedrooms and the size, in square feet, of each residential rental unit);
2. The percentage of residential rental units in the building that are low-income units;
3. The rent charged on each residential rental unit in the building (including the source and amount of any utility allowance calculations);
4. The low-income unit vacancies in the building(s) and information that shows when and to whom the next available unit(s) was rented;
5. The number of occupants in each low-income unit;
6. The annual income certification of each low-income tenant per unit;
7. Documentation to support each low-income tenant's income certification;
8. 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;
9. A list of all tenants of the building(s) at initial rent-up, which includes the name of occupant, number of persons, and annual income;
10. 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);
11. Documentation that the owner has not refused to lease a unit in the project to an applicant because of any protected status, including VAWA history, or 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;

12. The project was continually in compliance with the Violence Against Women Act and all applicable implementing regulations;
13. 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;
14. 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; and
15. If a property receives funding from the following sources; HOME funds, Housing Assistance Payment (HAP) contract funds, HDF funds, or the LIHTCs 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 five (5) years.
16. If the property receives funding from the following DSHA sources; DSHA, HDF, HOME, or Housing Trust Fund, monthly financial data must be entered into DSHA's database system MITAS. This includes annual budgets, monthly income and expenses. Supporting documents must be submitted monthly to the asset management mailbox for review by the property's asset analyst.
17. All Owners are required to provide DSHA with a copy of the annual financials within 90 days of the end of the fiscal year. DSHA accepts the financials in PDF format and it must be signed by the owner and management agent.

The records (listed above) for the first year of the credit period must be retained for at least six (6) years beyond the due date (including any 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 six (6) years after the due date (including any 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 twelve (12)-month period, the project has achieved the following requirements:

1. The project met the required minimum set aside or any higher set aside elected by the owner;
2. There was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change;
3. The owner has received an annual income certification from each low-income tenant and documentation to support that certification;
4. Each low-income unit in the project was rent-restricted under Section 42(g)(2);
5. All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless, provided under Section 42(i)(3)(B)(iii));
6. 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;
7. 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);
8. 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;
9. 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;
10. 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;
11. 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;

12. The owner has not refused to lease a unit in the project to an applicant because of any protected status, including VAWA history, or 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;
13. The project was continually in compliance with the Violence Against Women Act and all applicable implementing regulations;
14. 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;
15. 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); and
16. The certifications and reviews described in this section shall be made at least annually, covering each year of the initial fifteen (15)-year compliance period and the fifteen (15)-year extended use period.

The owner must certify the above under penalty of perjury. In addition, it is a state crime punishable by a fine of up to \$2,300 or up to one (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 must 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.

### **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 forty-five (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 sixty (60) days of the date of DSHA notification to correct the violation, unless a written extension is provided by DSHA.

## **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 and an additional \$250 per unit for average income projects. This fee must be paid prior to receiving an allocation of tax credits; at the issuance of IRS form 8609 or the Allocation 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 will also be due as long as DSHA has LIHTC monitoring responsibility (after the initial fifteen (15)-year compliance period has expired and during the second fifteen (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.

## **2023-2024 Application Checklist for Low Income Housing Tax Credits**

The exhibits checklist and specified supporting documentation must accompany the LIHTC Application. Please be sure each exhibit is labeled with the appropriate number. The checklist is available at the following link:

[www.destatehousing.com/Developers/lihtc/2023/2023\\_gap\\_exhibit\\_checklist.pdf](http://www.destatehousing.com/Developers/lihtc/2023/2023_gap_exhibit_checklist.pdf)