

2012 QAP COMMENTS and DSHA RESPONSE

DSHA would like to thank all our partners for their feedback and comments to the 2012 Qualified Allocation Plan (QAP).

DSHA has summarized the comments and feedback by category.

Preservation

- We would like to suggest an “At-Risk” set-aside for LIHTC projects entering their extended use period so we may re-syndicate these projects and keep affordable. This would be a viable alternative to the Qualified Contract Process.

DSHA Response: DSHA conducted a Preservation Analysis in 2009 to assist DSHA with further defining Preservation within the QAP and other housing policies at DSHA. DSHA looked at the Delaware portfolio of assisted and subsidized properties as a whole, using nationally recognized risk factors and the reports from other HFAs. The risk factors provided DSHA a better estimate of the type and scope of need to further prioritize preservation. The research indicates that there is very little risk of losing sites to conversion to market rate.

In 2011, our research indicates that sites that were placed in service prior to 1990 have a more urgent need for rehabilitation and DSHA has further defined Preservation. Our research also indicates the RD portfolio in particular is older and in more need of substantial rehabilitation.

DSHA recognizes that many LIHTC properties that are entering or are in the extended use period are “at-risk” of converting to market rate. In order to convert, these properties must go through the Qualified Contract Process. This is a requirement of Section 42 of the Internal Revenue Code. The aforementioned properties are still eligible to apply for tax credits; however, they may not be eligible for all of the points in the Preservation category. DSHA LIHTC resources are limited to the small state minimum annual tax credit amount and DSHA must base its Qualified Allocation Plan on the Statewide Needs Assessment. Properties that are older and need substantial rehabilitation continue to be the greatest need in Delaware.

DSHA is researching and developing other strategies and multi-family mortgage products that may satisfy some of the issues surrounding “at-risk” or older tax credit properties and will be introducing more information to the public in 2012.

- Increase the preservation pool set-aside for proposals involving the preservation and rehabilitation of existing multifamily rental housing in the final 2012 QAP.

DSHA Response: As stated above, Preservation continues to be a large need in Delaware and a priority for DSHA. In 2011, DSHA allocated credits to six properties. Five of the six properties were Preservation sites. Due to a carry-forward of credits for 2011 projects, DSHA estimates that approximately \$1.9MM will be available for all applicants. Approximately 43% of the 2012 credits available will be set-aside for Preservation.

- Create alternative standards for preservation and new construction proposals when considering environmental sustainability. We advocate DSHA to consider developing a more comprehensive set of criteria, keeping in mind that the preservation of existing affordable housing is fundamentally green. We urge DSHA to consider including Enterprise Green Communities in your final QAP.

DSHA Response: DSHA will take into consideration for the 2013 QAP after more research and analysis is conducted.

- Direct the Eligible State Basis Boost towards preservation.

DSHA Response: DSHA currently uses the Eligible State Basis Boost for Preservation projects for financial feasibility purposes.

Tax Credit Allocation and Pools

- We believe that limiting a credit request to the maximum of the amount of credits available to a specific pool will render eligible projects infeasible and that the “per developer” limit of 50% of the allocation is severe enough limitation on larger projects.
- We disagree with the new requirement to limit an application to the amount of credits in each targeted Pool. In the past, not all of the available credits in each Pool have been applied for, or the project was disqualified, and the credits became available to other Pools. While not knowing the difficulties DSHA may have experienced with the old Pool system, it seemed to work well for us.

DSHA Response: For many years, DSHA has requested that Developers size their tax credit request to its respective pool. Over the last several allocation years, DSHA has received very large allocation requests over and above the amount available in any respective pool. When those applications were allocated credits, DSHA has had to forward commit large amounts from the next allocation year which then reduces the amount of credits available for the next year as the case is for 2012. Sizing the tax credit request to the respective approximate pool amount provides a balanced management tool for DSHA to allocate credits appropriately in a given allocation year. However, DSHA will revise the language in the QAP to allow for tax credit requests that are no more than 10% over the respective pool.

- Please provide clarification as to exactly how non-profits applicants are impacted by this limitation.

DSHA Response: Non-profits will utilize their respective pool and if needed, utilize any balance of tax credits needed from the other respective pools, in accordance with the type of project (i.e., Preservation, New Creation or Chronically Homeless).

- What is the maximum amount of credits that can be applied for? 50% of the available credits of \$1.9MM or 50% of the States annual credit authority?

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

The 50% limit (for either the Development entity or per development) is based on the credit authority and not credit availability. DSHA's credit authority for 2012 will be approximately \$2,525,000 making the 50% limit approximately \$1,262,500. Development entities may still request credits for more than one project as long as the combined request does not exceed \$1,262,500. However, the development rule will be \$1,262,500 or the respective pool amount, whichever is less.

- Consultants Developments should be removed from the calculation of the 50% credit request limit.

DSHA Response: Consultant Developers are considered part of a development entity and in most cases share in a large portion of the Developer Fee; they are therefore considered part of the development entity.

Relocation

- DSHA should be willing to waive the \$3,000 per unit maximum with written justification prior to application submission.

DSHA Response: DSHA recently increased the relocation line item to \$3,000 per unit. In addition, DSHA created a Relocation Operating Deficit Reserve that can be used to off-set operational costs due to relocation. Based on careful analysis of relocation costs at previous developments, both reserves should be sufficient to cover relocation.

Increase in Compliance Period

- Why does a Developer need to get consent of DSHA to sell, re-syndicate or transfer the LP interest so long as the project is maintained as an affordable complex?

DSHA Response: DSHA has required consent in the Declaration of Restrictive Covenants (Extended Use Agreement) since 1990. This is also typically a requirement in other state's extended use agreements. In previous QAP's, the term opt-out was not defined. In the 2012 QAP, DSHA clarified this category to define the term opt-out.

Requiring consent provides DSHA with the information the agency needs to complete compliance reporting and other document administration IRS tasks associated with the LIHTC program.

In addition, this ranking category was revised to include additional points for owners who chose not to opt-out during the extended use period. Owners can now chose to waive their opt-out provisions (including selling, re-syndicating, or transfer) for 5 year increments to extend the affordability period.

- What type of documentation are you looking for that clearly states the compliance and extended use period. If an applicant chooses to waive its opt-out rights, to sell, re-syndicate or transfer, there will not be an opportunity in the future to re-capitalize an aging tax credit project even if there is continuing commitment to keep it income-restricted.

DSHA Response: There are two ways in which to document the compliance and extended use period. The web-based application has a check box area that will need to be completed and a written statement from the General Partner that clearly describes the compliance period and extended use period signed by the authorized signatory should be included in Exhibit 19.

The QAP states that DSHA may provide a waiver from the opt-out decision if substantial rehabilitation is needed for aging tax credit properties.

Developments Serving the Lowest Income

- We strongly object to targeting units to a variety of incomes as we feel that greater weight or points should be given to those projects providing units for extremely low income and low income residents. The chart is too complicated with too many gradations.

DSHA Response: DSHA combined several previous categories into one ranking category which included Mixed Income/Market Units previously 5 points, Additional New Units for Families in Poverty previously 5 points and Developments Serving the Lowest Income, previously 15 points. We combined the three categories into one ranking category for 20 points. DSHA is encouraging projects to provide a mix of units at different affordability levels from extremely low-income to market rate. DSHA does agree however, that the title of the ranking category may be misleading and has revised the category to Balanced Income Targeting.

- Your efforts to target units at different income levels is really going to give nightmares to a lot of management agents as they will need to track multiple income groups. Many properties have multiple income targeting and it has become a marketing issue and some income units are hard to fill. This effort seems to be in opposition to your efforts to have more units serving more lower income groups as the points don't reward an applicant for deep income targeting.

DSHA Response: DSHA has had various levels of income targeting over the years and much of the portfolio has a variety of income levels currently given the multiple funding sources used by most sites. While we acknowledge there may be a slightly increased reporting burden, most software products include income targeting tools. In addition, reporting through DSHA's MITAS database software system will also assist with tracking this information.

Promoting Balanced Housing Opportunities

- The published maps offer the guidance of promoting rental preservation in all “impacted” areas and it is our opinion that this should be looked at with some favorable consideration as a project in non-impacted areas. Please clarify that this point category is available to new creation and preservation.
- We believe this point category should be a sliding scale, offering at least 3 points for projects in an impacted area and zero points in “severely impacted” areas.

DSHA Response: DSHA’s policy is based on our research and designed to promote a balanced housing approach for all DSHA’s housing programs. For the LIHTC program, DSHA’s goal is to try to balance housing investments and encourage the creation of affordable housing opportunities within the State of Delaware in areas that contain little or no affordable housing, but which may offer economic opportunity, proximity to the workplace, additional school choices, or supportive infrastructure for DSHA programs. DSHA has clarified that points will be awarded to new creation or preservation developments located in “non-impacted” areas, but projects in “impacted areas” will not receive points in this category. However, projects in “impacted areas” may receive points in other categories such as Preservation.

Extremely Low Income

- We applaud the idea of increasing the developer’s fee by 5% to increase the basis and using the equity generated by this extra basis for the rental subsidy. We would suggest broadening this to include three points for other creative plans to provide owner-financed rental subsidy and let the developer make his or her case for the rental subsidy plan.
- In the Extremely Low Income section, it is stated that when there is no DSHA debt, any balance left if the rent subsidy reserve will be equally divided between the applicant/sponsor and limited partners. You really should say it will be divided pursuant to the Partnership or Operating Agreement of the Owner in as much as that is an internal business item between the partners/members.
- DSHA should not dictate the division of any cash reserves among the applicant and its limited partners.
- Since the fee will be deferred and paid from annual cash flow distributions, there is a risk that cash flow is not adequate to fully repay the note. Has the threat of recapture been considered? The deferred fee repayment should be the priority over DSHA’s debt repayment.

DSHA Response: DSHA has made the recommended change. DSHA has revised the category so that the partnership will dictate the distribution of any reserve remaining at the end of the compliance period as follows: “At the end of the compliance period, should ELI subsidy reserve funds remain and/or in the event the reserve is not used for its intended purposes, any funds remaining in the reserve at the end of the compliance period or sale of the property, whichever is earlier, will be

distributed in accordance with the partnership agreement". This should mitigate any recapture issues due to the deferred developer fee.

- Why new units only? These points should be available to preservation of a property that has subsidy, but does not have 100% subsidized units?

DSHA Response: The Extremely Low Income reserve is intended to create new units of subsidy in projects that have no other resource. The reserve is to encourage applicants of New Creation projects as well as Preservation projects that have no subsidy to create units for Extremely Low Income residents.

- An investor is never truly secured at the time of application. Please clarify.

DSHA Response: DSHA will require commitment from the owner/sponsor at application. At allocation, in order to qualify for the additional developer fee, the applicant/sponsor must provide evidence satisfactory to DSHA that an equity investor has been secured. If an investor has not been secured, the applicant will need to fund the reserves with other resources.

- Please clarify that you are suggesting a 5% increase in fee calculation vs. a 5% increase of the fee amount.

DSHA Response: Yes, applicants may request a developer fee that does not exceed 5% above the maximum percentage allowed previously for the basic developer fee. However, the additional fee may be requested only if the applicant commits the entire additional basis/equity generated by the additional developer fee for a rent subsidy escrow for ELI residents for the initial compliance period. The additional developer fee above the maximum limit will not be paid initially and must be deferred and paid from the project's available equity distribution. The Developer will receive only the initial maximum fee allowed under DSHA's underwriting criteria and will defer any increased fee that generates additional basis/equity for the ELI reserve. Any additional Developer Fee will be deferred and will be paid per the partnership distribution requirements.

Sites and Neighborhood – Protecting Environmental Resources

- In the proposed (and current) QAP, page 51, under the heading "Protecting Environmental Resources"; "Development... shall **avoid all** of the following:", the 6th bullet point states "Land or development having environmental issues (i.e., superfund site, brownfields,...)".

As a point of clarification, would sites that **had** environmental issues and been remediated qualify for points in that section?

DSHA Response: DSHA will make the recommended change. Projects that had environmental issues and have been remedied will be eligible for the 2 points in the Sites and Neighborhood category and this category has been clarified.

- In the Protecting Environmental Resource ranking section of the QAP, there is mention of the proximity to a railroad within 1,000 feet. However, the Environmental Review Checklist mentions 3,000 feet.

DSHA Response: In order to receive points in the Protecting Environmental Resource category, the development must avoid all of the environmental issues including a railroad within 1,000 feet. This is a ranking category. However, the Environmental Checklist is a checklist that is used to determine environmental issues when federal funding may be utilized as a source of funding. A railroad located within 3,000 feet of a property will require additional noise assessments which may require additional reviews and costs and therefore has different footage requirements.

Access to Transit

- The requirements indicate that the accessible route to a bus stop cannot expect pedestrians to traverse unsuitable roadways other than local neighborhood streets. Is having an accessible route that crosses a main street at a signaled intersection a permitted route?

DSHA Response: The definition of a main street can differ by location and may or may not be suitable as an accessible route. When a consultation is made with the Delaware Transit Corporation, the accessible route that may cross a main street will be determined at that time.

Social Services

- Stipulating that social services must be provided at a minimum of two hours per month (24 hours annually) is prohibitive. We would suggest wording for the service to at least a year for a minimum of 24 hours during any 12 months. Also Financial Literacy and Housing Counseling are not the same service.
- The number of points available for the social services scoring criteria (3) do not seem to justify how complicated this category is becoming. We appreciate that DSHA has recognized that legitimate services can be provided off-site, but to require a minimum of 2 hours a month (24 hours annually) seems to miss the mark. Some services are not provided on a monthly manner for 12 months.
- Is the requirement that services should be provided for a minimum of two hours a month or an average of two hours per month with a minimum of 24 hours annually? We believe that housing counseling and financial literacy are two distinct services and should not be considered the same service.

DSHA Response: DSHA will make the recommended change. DSHA has clarified that financial literacy does not include Housing Counseling as Housing Counseling is a distinct service. In addition, DSHA has clarified that Social Services must be affordable, appropriate, available, and accessible. In order to receive a point in this category, the service must be provided in every calendar quarter and must be provided for a total of 8 hours each year. In order to receive the maximum number of points (3), at

least three qualifying services must be provided, representing a total of 24 hours of qualified social services provided to the development's residents.

Underwriting Criteria – Debt Coverage Ratio

- A minimum of 20 year term on the permanent mortgage is too restrictive and should be 15 years.

DSHA Response: This language did not change in the 2012 QAP. DSHA merely clarified the amortization language this year to clearly note 30 year amortization.

Audited Financial Statements

- Please clarify that audited financial statements of individual principals of the applicant and/or the developer are not being requested as this request is unreasonable and cost prohibitive.

DSHA Response: DSHA has made a recommended change. DSHA has clarified the Exhibit Checklist, Number 8, in the Attachments to the QAP to reflect that Current Audited Financial Statement for the Developer(s) and/or General Partner (Managing Member) - If the ownership entity is an existing organization, the most recent and prior year's audited financial statements must be included. The audited financial statements must clearly indicate all owners of any entity(s) and their respective financial investment in the entity(s) as applicable.

Bidding Protocol – General Contractor's Options

- General Requirements are actual, cost certified costs to the project. Eligibility of these costs are clearly defined in DSHA's Cost Cert Guide. The limitation of 7% to this as stipulated of bring a GC at the time of application, is an unjustified limitation and unfairly penalizes the GC, whose profit and overhead has already been given a stipulated reduction. We suggest that the limitation on general requirements be restored to 10% maximum as the cost recover for any costs not incurred during the cost of construction will be identified by the cost certification.
- We disagree with the reduction of the General Requirements cost item because Option 1. The bidding protocol has been selected. General Requirements are actual costs of running the construction project on-site and do not differ whether the contract has been bid or negotiated. Plus the costs must be documented for the draw and cost certified. Some contractors might have higher or lower on-site general conditions costs but they are related to business practices rather than the bid process.
- We disagree with the requirement for the General Contractor selected under Option 1 to solicit at least 3 bids from subcontractors. We understand the requirement for them to get bids for any trade work that they will self-perform but it should be limited to that. A General Contractor is going to take the risk for completing the work, on budget and on-time and they usually work with selected subcontractors because they are familiar with the quality of work and the pricing provided by the subcontractor. This requirement appears to us to be a back door way to get

bidding and still require the GC to take less profit after their business has become more complicated and risky (as using an unknown subcontractor increases risk).

- For Option 2 – DSHA should not be dictating that all the contractors should be invited. Developers should have the right to select contractors in a manner that is acceptable to them.
- We disagree with the requirement to invite every contractor on DSHA’s approved list to bid. That could possibly involve inviting up to 20 contractors. It is unnecessary, time consuming, and most likely would result in additional service charges by the architect. In most cases, the sponsor or architect does not know all the contractors on the list. It is incumbent on the sponsor, developer, and architect to monitor those they have invited to bid and if a contractor decides not to bid, it usually is not at the last minute and the development team can invite another contractor so as to insure they get 3 bids. If not, the development team takes the risk for delays and the potential jeopardy of the project, not DSHA.

DSHA Response: Over the last several months, DSHA has reached out to our Development community and received input from Developers, General Contractors and Architects on DSHA’s requirement for bidding and ways in which to improve the bidding requirement while balancing the approach of the Development Community and the cost savings to the development. After careful analysis of this input, DSHA chose two options for the bidding the work. The Developer may choose to select the General Contractor at application or the Developer may choose to select the General Contractor after an allocation of credits is made. Each Developer will have to decide which option is best for its application.

DSHA has made a recommendation change. DSHA has revised the General Contractor’s General Requirement for Option 1 to 7% for New Construction projects and 8% for Rehabilitation projects.

- For Option 1 and the solicitation of bids, will bids be required to be sealed? Who defines the scope of work per trade/sub contractor? Who is to determine if a sub contractors bid is incomplete? Who assumes the liability for omissions in such bid solicitations? If the GC is to perform preconstruction services, such as defining scope for trade bids, are additional fees eligible project costs? It should be noted that the GC’s maximum profit and overhead has been reduced but their scope of work and exposure to risk has been increased?

DSHA Response: For Option 1, bids will not be required to be sealed. The Architect should define the scope of work in accordance with the AIA trade payments line items for both Option 1 or Option 2. The Architect and General Contractor should review all contracts together to mitigate potential errors and omissions. We suggest that your general counsel be contacted for any liability issues. Pre-construction services are not eligible project costs, but can be paid from other non-project sources. Three bids are required for sub-contractors if the General Contractor is self-performing work for trade payment line items. If the General Contractor is not performing work for the trade payment line items, then two bids are required.

- Please define joint venture general contractor.

DSHA Response: All general contractors must be pre-approved by DSHA. This includes a general contractor joint venture whereby two general contractors may have an agreement to work together as one general contractor entity to perform the construction work on a development. A general contractor joint venture will need a joint venture agreement that specifies the roles, terms and fees of each general contractor during and after (warranty responsibilities etc) the construction of the development.

DSHA's Web-Based Application

- In our experience, a pure web-based application should be used as a secondary application during the first year in an effort to work out kinks and allow for a second option should the system not work as intended.

DSHA Response: A printed copy of the electronic submission will be created by the Developer and submitted to DSHA as a safeguard during the first year. The new web-based system is designed to reduce data entry burden and duplicative information requests.

DSHA's Minimum Construction Standards

- DSHA has revised its construction standards and includes a requirement that plans and specifications that do not meet current code requirements will not be considered cause for a change order. All municipal building codes ends with a statement that states all items in this code are subject to the authority having jurisdiction. Some jurisdictions will add requirements beyond code even after approval. All of these changes are part of project costs regardless if the change in code was not in the plans and specifications.

DSHA Response: DSHA has made the recommended change. Any code requirements that are missed, neglected, or were due to changes required by code authorities, can be considered for a change order as part of the project costs. Any additional costs or increased cost above and beyond the customary charge if the work was not included in the original scope due to the error may not be approved and will be the responsibility of the architect. DSHA reserves the right to determine if appropriate approval on all change orders and each request will be reviewed on a case by case basis.

- Site Work – DSHA's requirements include 100% accessible routes to all units. How do you provide an accessible route to a second floor unit? Does this mean that all buildings must provide an elevator?

DSHA Response: The route to all units must be accessible, not the unit itself. Units on a second floor should have an accessible route to access the building in which the unit is located.

- Sheathing – In a rehabilitation of an existing roof with ½” sheathing – how do we conceal the change in thickness from the ½” to the required 5/8”? It is our belief that the shingle manufacturers will not provide a suitable warranty for this deficiency.

DSHA Response: It is DSHA’s intent that all new sheathing where possible be 5/8”. However, replaced sheathing will be expected to be furred out to match existing sheathing.

- Miscellaneous - What exactly does exterior building services should be designed maintenance-free mean?

DSHA Response: All exterior products should have minimal maintenance requirements.

- Please clarify what Euro edge means for no self-edge counter tops.

DSHA Response: A Euro edge is wrapped with no seams on the front edge. This is to avoid a delamination issue.

- Specialties – Please define the distance of the “Splash Zone” that are required for the bathtubs area?

DSHA Response: The splash zone will vary for every bathroom and will depend on the layout of the bathroom configuration. Typically, the splash zone is the area closest to the faucet or shower head which can get saturated from use. The architect shall determine the splash zone for each bathroom configuration.

- Appliances – Ranges and non-vented range hoods are not able to meet Energy Star.

DSHA Response: Thank you for pointing out this discrepancy. DSHA will update this section as necessary.

- Plumbing Piping – Existing sanitary lines shall be video traced to determine viability for the rehabilitation – is this cost to the owner prior to bid?

DSHA Response: The responsibility of the cost for this work will depend on how the contract(s) are specified but are typically the cost of the owner.

- Landscaping - Why are air conditioning condensers now required to be on poured concrete pads rather than pre-cast or other materials?

DSHA Response: DSHA’s experience is that pre-cast pads are subject to tilting and settling and could cause potential damage to the air conditioning unit. In addition, poured concrete pads eliminate continual grounds maintenance.