

Virginia Administrative Code

Title 13. Housing

Agency 10. Virginia Housing Development Authority

Chapter 200. Rules and Regulations for the Allocation of Virginia Housing Opportunity Tax Credits

13VAC10-200-30. Availability and amount of HOTC.

A. Based upon the legislative intent of § 58.1-439.30 G of the Code of Virginia, notwithstanding any provisions of the enabling legislation inconsistent with § 58.1-439.30 G, the authority will award:

1. For calendar year 2021, up to \$15 million of HOTC for qualified projects. The credit period shall be one year.
2. For calendar years 2022 through 2025, up to \$60 million of HOTC for qualified projects for each of the four calendar years beginning in calendar years 2022 through 2025. The credit period shall be 10 years. The credit shall be allowed ratably for each qualified project, with one-tenth of the credit amount allowed annually for 10 years over the credit period, except that there shall be a reduction in the tax credit allowable in the first year of the credit period due to the calculation in 26 USC § 42(f)(2), and any reduction by reason of 26 USC § 42(f)(2) in the credit allowable for the first taxable year of the credit period shall be allowable for the first taxable year following the credit period.

The aggregate HOTC program for calendar years 2021 through 2025 for qualified projects shall equal up to \$255 million. Any HOTC not used by taxpayer in a taxable year may be carried forward by a qualified taxpayer for the succeeding five years. If a HOTC has been awarded prior to January 1, 2026, such credit may continue to be claimed on a return for taxable years on and after January 1, 2026, but only pursuant to its applicable credit period.

B. To qualify for the HOTC, the applicant must have applied for federal 9.0% LIHTC or federal 4.0% LIHTC, and have been (i) allocated LIHTC or (ii) allowed LIHTC (i.e., determined by the authority to be eligible for LIHTC but not allocated LIHTC). In the event of alternative clause (ii) of this subsection, the HOTC may be stand-alone (i.e., not allocated to the applicant in addition to LIHTC). An applicant having applied for 9.0% LIHTC (including applicants having been awarded 9.0% LIHTC) may elect to amend its application from 9.0% LIHTC to 4.0% LIHTC in connection with assignment of points and rankings for HOTC in accordance with 13VAC10-200-40. In so doing, the applicant may increase or decrease its requested federal credit amount.

C. While only LIHTC projects placed in service on or after January 1, 2021, may be eligible for HOTC, not every development receiving LIHTC and placing in service on or after January 1, 2021, will receive HOTC. Rankings and awards of HOTC to qualified projects shall be in accordance with 13VAC10-200-40.

D. The HOTC for each qualified project may be (i) up to the amount of the federal LIHTC allocated or allowed for the qualified project or (ii) a percentage of the federal LIHTC allocated or allowed for the qualified project as determined by the authority, based upon the availability of

HOTC as compared to the federal LIHTC allocated or allowed for the qualified projects or such other factors the executive director deems appropriate for good cause to promote the goals and interests of the Commonwealth in the HOTC program.

E. The authority may pre-allocate future years' HOTC, but such credits cannot be claimed until the calendar year designated by the authority. Subject to the requirement that the total amount of tax credits authorized under this chapter shall not exceed \$15 million for calendar year 2021, and \$60 million per year for calendar years 2022 through 2025, the authority may re-allocate, in the following calendar year, but no later than December 31, 2025, any HOTC that are recaptured, disallowed, terminated, or canceled and returned to the authority.

F. If the amount of HOTC authorized in a calendar year for qualified projects is less than the total amount of credits available for qualified projects, the balance of such credits, in an amount not greater than 15% of the amount of credits available (i) shall be allocated by the authority for any qualified project in the following calendar year, (ii) shall not be allocated at any time after such following calendar year, and (iii) shall be allocated no later than December 31, 2025.

Statutory Authority

§36-55.30:3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 38, Issue 11, eff. January 1, 2022; amended, Virginia Register Volume 39, Issue 9, eff. December 1, 2022.