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Low-Income  
Housing Tax Credit  
(LIHTC) Program  
Guideline

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2022 and  
2023

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## Table of Contents

PREFACE .....	3
I. Background .....	3
II. Utilizing the Average Income Minimum Set-Aside (MSA) .....	4
III. Preliminary Application and Pre-Application Conference .....	5
IV. Submission and Eligibility .....	6
V. Application Submission .....	10
VI. Application Review and Processing .....	10
VII. Application Approval and 9% LIHTC Application Reassessment Process .....	14
VIII. Issuing the Tax Credit Reservation – 9% LIHTC Only .....	15
IX. 4% LIHTC and 9% LIHTC Transactions .....	17
X. Appraisal and Market Study .....	18
XI. Compliance Monitoring .....	18
XII. Changes in Subsidy or Financial Assistance .....	19
XIII. Application and Tax Credit Servicing Fee Schedule .....	20

## **PREFACE**

This Guideline is to be used by applicants requesting funding through the Low-Income Housing Tax Credit (“LIHTC” or “tax credit”) Program. This Guideline supplements the existing laws and rules prescribed by the Internal Revenue Service (the “IRS”) in Section 42 of the Internal Revenue Code (the “Code” or “IRC”) and related regulations. Applicants are advised to review the documents specified in the Governing Authority section of the Qualified Allocation Plan (QAP) along with the Glossary of Terms and the PowerPoint presentation and materials distributed at the annual LIHTC Program Overview Session<sup>i</sup>. If any statement(s) in these documents conflict with the laws governing the LIHTC Program, those laws take precedence. The materials should not be relied upon solely or as a substitute for an applicant’s own tax or legal counsel or interpretation of laws relating to the LIHTC Program. Applicants are ultimately responsible for providing the information necessary for the determination of the development’s eligibility and compliance under the LIHTC Program.

### **I. Background**

The IRC §42 Low Income Housing Credit Program<sup>ii</sup> was enacted by Congress as part of the Tax Reform Act of 1986 to encourage new construction and rehabilitation of existing buildings as low-income rental housing for households with incomes at or below specified income levels. Since its inception, the LIHTC Program has helped construct and rehabilitate a significant portion of the nation’s affordable housing stock.

The LIHTC Program works as follows: The IRS allocates federal tax credits to state housing finance agencies like CHFA who administer the LIHTC Program. CHFA awards tax credits to eligible developers of affordable housing developments through a structured application process. The developers use the equity capital generated from the sale of the tax credits to lower the debt burden on their tax credit properties, making it easier to offer lower, more affordable rents. Investors purchase the tax credits to lower their federal tax liability.

Developers typically structure LIHTC developments as limited partnerships or limited liability companies providing ownership to the investors. This structure allows the investors to receive tax credit benefits and passive losses.

Under IRC §42(m)(1), state housing credit agencies must develop a QAP that is approved by the governmental unit having jurisdiction over the state; CHFA’s QAP is approved by the Governor. The QAP must have the following characteristics:

1. Identifies the selection criteria to be used for determining housing priorities that are appropriate to local conditions. The selection criteria must include project location, housing needs characteristics, project and sponsor characteristics, tenant populations with special needs, public housing waiting lists, tenant populations of individuals with children, projects intended for eventual tenant ownership, the energy efficiency of the project, and the historic nature of the project.
2. Gives preference to projects serving the lowest income tenants, for the longest periods, located in qualified census tracts, and which will contribute to a concerted community revitalization plan.

Developers must commit to set-aside a certain percentage of units, deemed qualified units that are affordable to households earning at or below specific income levels. There are three Minimum Set-Aside (MSA) options,

including 20/50 Set-aside, 40/60 Set-aside, and an Average Income Set-aside. Please refer to the LIHTC Glossary of Terms for definitions.

The 9% LIHTCs are awarded based on an annual competitive funding round. Currently, the 4% LIHTCs are awarded through a non-competitive, ongoing, open-application process. Applicants are advised that the 4% LIHTCs may become subject to a Notice of Funding Availability (NOFA), which will be duly announced on CHFA's website if applicable.

The amount of tax credits awarded to a development may not exceed the amount CHFA deems necessary for the development's financial feasibility and its viability as a low-income housing development throughout the compliance period.

CHFA reserves the right to request change(s) to the applicant's application submission and supporting documents in a manner that promotes CHFA's housing goals, specific market needs and/or program objectives. Furthermore, CHFA may make adjustment(s), with notification to the applicant, to carry out its housing goals.

## **II. Utilizing the Average Income Minimum Set-Aside (MSA)**

The Consolidated Appropriations Act of 2018 established an Average Income MSA as an election for LIHTC developments. Utilization of Average Income MSA requires CHFA consent and must meet the requirements outlined below. At this time, the IRS has not yet issued guidance regarding the implementation of Average Income MSA; therefore, these Guidelines are subject to change and may be superseded at any time by IRS guidance.

1. All Average Income MSA proposals to CHFA must include the following:
  - a. A detailed explanation of why the Average Income MSA is being proposed; and owners must agree in writing to the compliance implications;
  - b. Evidence of consent by the Syndicator, Management Agent and Lender for the use of the Average Income MSA;
  - c. Certification of the Owner/Management Agent's ability to administer the compliance components specific to the Average Income MSA. CHFA reserves the right to review policies related to compliance;
  - d. The ability to demonstrate unit parity in regard to bedroom size by income band; i.e. larger units cannot all be targeted to households in higher Area Median Income (AMI) bands;
  - e. The AMI bands must be supported by a market study; and
  - f. All LIHTC rents should be at least 10% below market rents.
2. Generally, MSA elections would not be changed after an application for tax credits has been submitted. In the event the applicant is reconsidering its proposal, the following items should be considered:

- a. CHFA will not consider any proposal that includes an increase to 9% LIHTCs or changes in points related commitments;
  - b. Depending on the magnitude of the proposed changes, reconsideration by the CHFA Board of Directors may be required, and/or the Mortgagor may incur additional fees;
  - c. The proposal must maintain the requirements of any CHFA/DOH funding award;
  - d. The approval of the Average Income MSA shall be made at the discretion of CHFA based on, but not limited to, updated underwriting, the complexity of the LIHTC compliance, and consideration of applicable IRC §42 requirements, fair housing laws and the irrevocable nature of the MSA election.
3. Compliance Considerations for Owners/Management Agents:
- a. The deadline to meet the MSA remains the same. The owner must certify to CHFA that the Average Income MSA was satisfied on 12/31 of the second year the project was placed-in-service;
  - b. CHFA will document the irrevocable Average Income MSA election in the Extended Low-Income Housing Commitment (ELIHC);
  - c. Once any MSA is selected on the 8609, it is irrevocable;
  - d. Out of compliance Qualified Units (e.g., over-income tenants, failed physical inspection, and failed for student) may not be included in the calculation for the average income of a project;
  - e. If two (2) or more Qualified Units become over income at the same time, the owner must make a reasonable effort to designate the next available market rate unit at the lower AMI of the two units. Owners must carefully document all decisions made with respects to the Next Available Unit Rule in properties employing the Average Income MSA;
  - f. Projects utilizing the Average Income MSA that have 100% LIHTC Qualified Units will not be considered for the recertification waiver; and
  - g. In addition to maintaining the development's applicable fraction, unit parity must be maintained throughout the compliance and extended use period with regards to bedroom size by income designation.

### **III. Preliminary Application and Pre-Application Conference**

1. All applicants shall indicate their intent to submit an application in the coming 9% LIHTC application round by submitting a Preliminary Application by the date announced. The Preliminary Application will be the basis for discussion at the Pre-Application Conference described below.
2. All Applicants shall be required to attend a Pre-Application Conference (Conference) with CHFA staff. Conferences can be scheduled anytime up to 45 days before the application due date for a funding round,

if applicable. Applicants are encouraged to schedule their Conference as soon as possible in order to incorporate any feedback into their application. DOH staff will be included in the Conference if applicable.

3. In addition to the Preliminary Application that will guide the Conference discussion, topics to be discussed at the Conference may include:
  - a. Any identity of interest between development team members
  - b. The completeness of plans and specifications
  - c. Energy conservation measures and green building options, renewables (solar), owner-paid utilities, and high-speed broadband access for residents of the proposed development
  - d. Environmental concerns related to the site and/or existing building(s), if any
  - e. Planning and Zoning approval(s) and any noted conditions
  - f. Applicability of Federal Davis Bacon or State prevailing wage rates
  - g. The procurement process for all development team members
4. CHFA intends to conduct the Conferences as confidential conversations. Designated CHFA staff will discuss the proposal with the intention of providing information and guidance. If available, applicants can submit or bring to the Conference a draft pro-forma including proposed budget, rent mix and operating expenses, and any technical services items that are available. In addition, Applicants for hybrid developments should be prepared to discuss the contemplated hybrid development in detail including timing for each portion of the hybrid development (9% and 4%). Applicants must submit the Preliminary Application by the announced due date and are encouraged to submit additional material in advance for the most productive discussion.
5. Proposals will not be fully underwritten or scored for the Conference. Any feedback provided by CHFA staff is contingent upon actual submissions and may be subject to change based on published revisions to Procedures, Guidelines and/or the QAP. The Preliminary Application is not intended to be an application for funding and any CHFA Conference discussion or response (whether written or verbal) or non-response, will not evidence a CHFA commitment for funding or approval of any kind and is non-binding on all future application reviews by CHFA.

#### **IV. Submission and Eligibility**

Each applicant shall submit to CHFA a complete LIHTC application package, which includes a completed current Consolidated Application (ConApp), all required attachments and third-party fees as may be required, and an application fee as reflected in the CHFA Multifamily Underwriting Standards Summary section of the Multifamily Rental Housing Program Guideline. Application due dates will be posted on CHFA's website as well as via other media. Applications shall be evaluated and scored, if applicable, based on the criteria outlined in the QAP. Additionally, applications will be evaluated based on development team capacity, demonstration of need and readiness.

In addition to the financial feasibility of a proposed application, adherence to state housing policy, and Basic Threshold Requirements as described in the QAP, applicants for tax credits will be evaluated on past performance and compliance on transactions with CHFA, DOH, HUD and other government funding agencies. Categories to be reviewed include but may not be limited to meeting timelines, deviation from proposed costs, executing proposals as submitted, tax credit compliance, funding program compliance and satisfactory operation of existing properties. The determination of applicant capacity and acceptance of an application for tax credits is at the sole discretion of CHFA.

For CHFA transactions:

1. Meeting Timelines will be measured as follows:
  - a. Proposed dates listed in the Consolidated Application will be compared to actual dates provided at Carryover/42M letter issuance
  - b. Performance will be tracked against dates in the construction contract and partnership agreement provided by the owner at initial closing
  - c. CHFA will review construction observation reports provided during construction
2. Deviation from Proposed Costs will be measured as follows:
  - a. Budgeted costs proposed at initial closing will be compared to the cost certification
  - b. Proposed hard costs will be compared to actual construction contracts
3. Executing Proposals as Submitted will be measured by a review of material changes to awarded or approved submissions in areas included but not limited to:
  - a. Design integrity
  - b. Affordability mix
4. Tax credit compliance will be verified based on reports from CHFA's Authorized Delegate
5. Compliance with requirements of other CHFA funding programs and/or funding programs administered by CHFA including but not limited to Housing Tax Credit Contribution (HTCC), State-Sponsored Housing Portfolio (SSHP), 9% LIHTC points award commitments, etc.
6. Satisfactory operation of existing properties
7. The applicant is required to provide contact information for other government funding agencies or lenders it has worked with during the past three years. CHFA may request information regarding an applicant's past performance from other government funding agencies or lenders.

CHFA may also take into consideration information discovered through its own due diligence. All information will be discussed with applicants at the Conference. Applicants are eligible to apply for 9% LIHTC, 4% LIHTC and Tax

Exempt Bonds (TEB), or hybrid 9% LIHTC and 4% LIHTC with TEB if they meet the CHFA requirements as specified in CHFA's Program Eligibility Requirements: Delinquent or Non-Performing Applicants and any additional specific requirements described in the QAP or applicable NOFA. Please refer to the CHFA website for requirements noted in CHFA's [Board of Directors Policy Statements](#), CHFA [Procedures](#), and related Guidelines including the [Multifamily Rental Housing Program Guideline](#).

If an applicant's 9% LIHTC application was unsuccessful in a previous funding round, the applicant must contact CHFA to discuss its plans regarding the application and any contemplated future submission.

A complete application submission includes and/or addresses:

1. A credible financing plan, which at a minimum includes the following:
  - a. The total projected development cost, including any land acquisition cost.
  - b. Development costs for construction, soft costs, developer fees, land, customary capitalized reserves, and equity syndication. In making a determination of cost reasonableness, CHFA shall utilize typical industry data and standards as may be appropriate for each development, based on the size, complexity, difficulty and location.
  - c. Applications require a credible financing plan including balanced sources and uses of funds in order to be fully considered. Applicants seeking funding from the Federal Home Loan Bank under its Affordable Housing Program (AHP) and who do not anticipate an award announcement prior to the due date of the 9% LIHTC application round must provide evidence of the AHP application and indicate how such funds would be incorporated into the sources and uses of funds if awarded. The AHP award may not replace Developer Resources such as cash and long-term loan from the developer/owner. CHFA at its sole discretion reserves the right to apply the AHP award to reduce other funding sources in the development, while maintaining balanced sources and uses. CHFA may require the resubmission of balanced sources and uses of funds at any time, in its sole discretion.
  - d. Clear identification of each financing source, including the terms of any proposed financing and the financing source(s) from which the applicant expects to receive funding other than resources sought from CHFA for construction or permanent financing; and copies of commitment letters and/or letters of interest that set out terms and conditions demonstrating serious intent from the provider for each proposed financing source. For proposed source of funds or financing from DOH, applicants need only include evidence of a pending application or pending request made to DOH. Applications are scored, in part, on the level of commitment from funders. Lack of funding commitments and/or letters of interest to support a credible financing plan may make an application ineligible for funding because there is no evidence of balanced sources and uses.
  - e. Applicant shall submit letters of interest (no less than two) from the development's potential syndicators.
  - f. In the case of a proposed hybrid financing structure, an applicant must submit both the 9% LIHTC application and a concurrent 4% LIHTC application for the respective portions of the deal at the time the 9% LIHTC application is due. CHFA will undertake a preliminary review for acceptance of the 4%



LIHTC application and its cohesiveness with the associated 9% LIHTC application. If the 9% LIHTC application is not successful, CHFA will not move forward with the complete review and approval process for the 4% application.

Note that CHFA reserves the right to consider hybrid financing structures that reduce the need for scarce resources. For more information, please refer to the [Hybrid Financing Structure Guidelines](#) on CHFA's website.

2. There must be demonstrated experience of the sponsor or general partner, either principal or entity, in successful LIHTC development(s). An applicant with little or no experience in LIHTC development can use a Joint Venture partnership to gain skills and access to the LIHTC program. A complete definition of Joint Venture can be found in the Glossary.

An applicant established as a Joint Venture that includes a partner, member or other Joint Venture participant with LIHTC Program experience shall engage a property management company with appropriate experience managing LIHTC Program developments. The applicant must be part of a qualified development team with previous experience in developing multifamily housing developments. All qualified development team members are subject to CHFA's [Program Eligibility Requirements: Delinquent or Non-Performing Applicants](#). Additionally, all qualified development team members must be prepared to demonstrate capacity to undertake the development proposed in the application ensuring resources are in place for timely completion. A qualified development team consists of the following team members:

- a. Sponsor/Applicant/General Partner (including Joint Venture partnership): Three (3) years relevant experience or three (3) successful developments, as evidenced in the ConApp. In the case of a non-profit entity, the experience of its development leadership, the majority of its Board of Directors or its Development Consultant may be considered. In the case of a public housing authority, the experience of the majority of the Board of Commissioners or the experience of its executive director may be considered. In this case, the housing authority may be considered the "sponsor" and its executive director its principal;
  - b. Architect: Please see the [Construction Guideline: Project Planning & Technical Services Review](#);
  - c. General Contractor: Please see the [Construction Guideline: Project Planning & Technical Services Review](#);
  - d. Management Agent: Please see the [Management Agent Approval Requirements](#); and
  - e. Consultant (optional qualified development team member): three (3) years relevant experience or three (3) successful developments.
3. Each applicant and its contractors, subcontractors, and management agents shall agree to comply with:
    - a. Federal and State executive orders, statutes, regulations, and other requirements of law relating to affirmative action and equal employment opportunity including the requirements that CGS §4a-60 imposes on those who enter into contracts to which the State is a party; and

- b. CHFA’s goals and requirements relating to equal employment opportunity, affirmative fair marketing and other affirmative action programs.
4. The sponsors and applicants of the developments must evidence commitment to undertake strong affirmative measures to ensure that the activity funded promotes regional economic, social and racial integration and the integration of persons with disabilities.
5. Each applicant pledging to include supportive housing units must specify at the time of application the amount of supportive units in its development, the specific unit sizes (one bedroom, two bedroom, etc.) along with the population to be served and must adhere to the current Supportive Housing Guideline and the related Quality Assurance Monitoring of such units.
6. Successful applicants may request a change in a development’s qualified development team in exceptional circumstances and such team member substitution is subject to review and approval by CHFA.
7. If an applicant was awarded points for items in their application, those features must remain in the development or points may be lost, the application re-scored, and credits potentially re-evaluated and rescinded. Examples include sustainability design measures, supportive housing, development team composition, deep income targeting and Developer Resources, determination to be made at CHFA’s sole discretion.
8. Please check the specific NOFA announcements on the CHFA website for the requirements of each NOFA.

## **V. Application Submission**

Applications must be complete upon submission. Incomplete applications will result in a loss of points or a failure to meet application Basic Threshold Requirements criteria as cited in the QAP and the application can be rejected.

CHFA reserves the right to contact applicants for clarifying information and to communicate with applicants during the review period to ensure a complete and thorough review. Applicants however may not submit Basic Threshold Requirement items set forth in the QAP after the application deadline.

## **VI. Application Review and Processing**

CHFA will allocate LIHTCs based upon the selection criteria and application ranking processes set forth in the QAP and other NOFA if applicable.

### **1. Credit Availability:**

#### **a. 9% LIHTC**

Applications for 9% LIHTCs are subject to the state’s tax credit ceiling allotment and, as such, are allocated by CHFA through highly competitive annual funding rounds.

#### **b. 4% LIHTC**

4% LIHTC allocated to any development does not affect the state's tax credit ceiling allotment. However, developments must satisfy the requirements for allocations under the QAP, CHFA Procedures, Policies, and the Code. Typically, CHFA issues the TEBs for developments that receive 4% LIHTC allocations. Any proposed development to be funded with CHFA TEBs is presented to the CHFA Board of Directors for approval. However, if another governmental unit will issue the TEBs, CHFA will review the underwriting for the TEBs on behalf of the State of Connecticut's Office of Policy and Management. In such instances, CHFA will issue a memo verifying compliance with the CHFA Multifamily Underwriting Standards for the State Bond Commission.

2. Application Classification:

The 9% LIHTC applications are separated into two classifications: Preservation and New Construction.

3. Application Criteria:

All applications must meet the criteria as established in the IRC and additionally meet the Basic Threshold Requirements outlined in the QAP.

4. Opportunity Characteristics:

CHFA encourages development of non-age restricted housing in areas of opportunities. For additional information, please refer to the [Opportunity Characteristics Guideline](#) and the [State of Connecticut Opportunity Map](#) on the CHFA website.

5. Rental Affordability:

In addition to the required MSA elections discussed above, for all development applications the applicant shall be required to commit to a period of 40 years of affordability to be documented in an ELIHC. Additionally, a minimum of 20% of the units in the proposed development shall serve households with incomes greater than 30% AMI but less than or equal to 50% AMI.

For 9% LIHTC New Construction applications, points may be awarded for rental affordability based on either *total units* and/or *qualified units*: Points will be awarded based on the percentage of qualified units that serve households earning at or below 30% AMI. Points will also be awarded based on the percentage of total units that serve households earning above 30% AMI and at or below 50% AMI. In both cases, rents must be set pursuant to HUD guidelines adjusted for family size throughout the extended use period.

6. Underwriting Criteria:

In accordance with the QAP, each LIHTC application will be reviewed for financial feasibility, including reserves. For 9% LIHTC developments proposing to carry an amortizing loan, operating income must cover expenses, including debt service, during the compliance period and must not be funded by pre-funded reserves. Proposals with high debt service coverages may be required to increase loan amortizing amounts, increase deferred developer fee, or both, in order to increase development funding sources and minimize tax credit allocation amounts.

Generally, the CHFA operating reserve will be funded with an initial amount of LIHTC equity and remain on deposit to fund future cash flow shortfalls. The reserve should be equal to at least six (6) months of total operating expenses, replacement reserves, real estate taxes and debt service. Additional reserves may be necessary to mitigate the real estate risk or to fund possible short-term deficits.

a. Operating Budget:

i. Rent Restrictions

The proposed development must meet the minimum income, occupancy, and rent restriction requirements of the IRC. Refer to the [Maximum Affordable Gross Rent and Income Limits](#) on CHFA's website. The applicable gross rent is associated with the fewest number of persons per household for the designated bedroom size. These gross rents include all utilities with the exception of telephone, cable television, and internet charges. The applicable utility allowance amount must be subtracted to arrive at the maximum net affordable rent.

ii. Income and Expense Assumptions

When reviewing the operating budget and the 15-year cash flow projections, CHFA will review the financing institution's assumptions for reasonableness and may seek additional information. Refer to the CHFA Procedures and the Multifamily Underwriting Standards Summary section of the [Multifamily Rental Housing Program Guideline](#) for income and expense assumptions.

b. Development Budget:

i. Qualified Census Tract (QCT)/Difficult Development Areas (DDA)

If the development is within either a HUD designated QCT or DDA, the eligible basis may be increased by 30% (referred to as a Basis Boost). These HUD designations are included in the ConApp package and on the HUD website. Definitions may be found in CHFA's [LIHTC Glossary of Terms](#) and in the IRC §42(d)(5)(B)(ii)(I).

ii. Developer Allowance Fee (DAF)

To the extent economically feasible, the DAF shall be based on a sliding scale as indicated in the CHFA Procedures. The DAF shall be inclusive of non-profit overhead and exclusive of land, building and syndication fees, capitalized reserves and pre-development financing costs.

iii. Contractor's Profit, Overhead and General Requirements

CHFA will allow a range of acceptable general requirements, contractor's profit and overhead maximums depending upon the complexity of the construction of the development. For specific ranges refer to the [CHFA Procedures and Construction Guideline: Project Planning and Technical Services Review](#). CHFA will review these line items for all developments.

iv. Construction Cost

The construction costs will be reviewed for overall reasonableness. CHFA will rely on various databases such as RSMeans® Building Construction Cost Data and CHFA's historical construction data, as well as evaluating developing labor and materials market conditions. At any time that project costs increase from the budget proposed at the time of application, CHFA shall require the applicant to mitigate and reduce such project cost increases. Efforts to reduce costs may include competitive bidding and/or value engineering or both as may be required by CHFA. If required, competitive bidding for a General Contractor or project value-engineering should be completed prior to the applicant's execution of a Carryover Allocation Agreement or receipt of an Authority-issued 42(m) letter.

v. Consultant's Fees

Housing or financing consultant fees will be paid from the proceeds of the developer's fee. Specialized Consultant fees may be paid out of the development budget. Consultants and Specialized Consultants are defined in CHFA's LIHTC Glossary of Terms.

vi. Field Observation

All LIHTC developments must provide construction observation reports to CHFA on a regular basis as described in CHFA's current Pre-Construction Guidelines. The field observer may be an architect from the development design firm or may be another CT-licensed architect retained for this purpose.

vii. Syndication Costs

The costs of syndication shall not exceed a rate acceptable to CHFA based on fees as a percentage of syndication proceeds. Syndication costs include all direct and indirect costs incurred in securing syndication proceeds (i.e. syndicator legal costs). Syndicator required asset management fees may only be payable from available cash flow after required debt service.

viii. Construction Contingency

Up to 100% of the amount budgeted for construction contingency may be included as eligible basis as supported by the Letter of Attestation.

c. Subsidy Layering Review

CHFA will take into account the combination of tax credits with other subsidies or federal, state and government programs, including but not limited to, the Section 8 Project-Based Vouchers, Preservation and Recapitalization Program, Federal Historic Tax Credit Program, Low-Income Housing Preservation, Resident Homeownership Act, etc., when allocating credits. Additionally, CHFA will allocate credits in accordance with any federal law or procedures (i.e. HUD Revised Subsidy Layering Guidelines), where appropriate.

## **VII. Application Approval and 9% LIHTC Application Reassessment Process**

1. Approved applications - If an application is approved by CHFA's Board of Directors, notification is sent to the applicant, and a Tax Credit Reservation is issued.
2. Unsuccessful applicants - If an application does not receive a LIHTC award, the application is terminated. CHFA will schedule a debriefing call to discuss with the applicant the action and the reasons for CHFA's findings.
3. Applications that do not meet Basic Threshold Requirements as specified in the QAP will not be eligible for an award and the applicant will be notified at the time the determination is made. There is no appeal of the determination that Basic Threshold Requirements were not met.
4. Reassessment process - At the conclusion of CHFA's Board of Director's adoption of resolutions confirming the 9% LIHTC ranking process, an applicant may request that CHFA reassess its decisions related to the acceptance, scoring or ranking of its application. The request for reassessment shall be submitted within 90 days of CHFA's Board of Director's funding round approval.

The request for reassessment must specifically identify in detail each issue sought to be challenged. The applicant's justification for the reassessment must be based on the documents filed with the original application. No applicant may request a reassessment of the evaluation and scoring of another applicant's application.

If the request for reassessment relates to the amount of housing tax credits recommended to be allocated, CHFA will provide the applicant with the application underwriting upon written request made by the applicant pursuant to the Freedom of Information Act.

The applicant's request for reassessment must be accompanied by Exhibits 6.3 (Development Budget) and 6.5 (Sources of Funds) of the ConApp (updated as necessary at the time of the request for reassessment) to reconfirm the development's balanced sources and uses of funds. No changes from the original submission are otherwise permitted. The request for reassessment shall be submitted to CHFA's Chief Executive Officer-Executive Director. The reassessment will be conducted by senior staff persons who were not directly involved in the evaluation of the application.

The applicant shall:

- a. Submit a request for reassessment, which must be accompanied by a \$5,000 reassessment fee.
- b. Understand that in the event that a change is warranted and such change(s) result(s) in an allocation of 9% LIHTCs, the reassessment fee will be fully refunded. However, the reassessment fee will not be refunded if a change in the overall score does not result in an allocation of 9% LIHTCs.
- c. Meet all applicable deadlines and timeframes. If a reassessment results in the applicant receiving a 9% LIHTC award (or additional tax credits), the applicant is responsible for meeting all elements of its proposal within the specified timeframe.

CHFA shall:

- a. Review the issue presented for reassessment;
- b. Determine whether the reassessment request is consistent with the criteria as well as other aspect(s) of the QAP, policy objectives, Procedures, Guideline and any administrative requirements of CHFA in place at the time of application; and
- c. Determine whether a change in the overall scoring is warranted.
- d. If an overall change is warranted, CHFA's Board of Directors will be informed. At the discretion of CHFA's Board of Directors, reassessments may result in a forward commitment of 9% LIHTCs in accordance with the QAP and the policy objectives, Procedures, Guideline, and administrative requirements of CHFA. A successful reassessment will not result in the cancellation of previously approved reservations.

## **VIII. Issuing the Tax Credit Reservation – 9% LIHTC Only**

Upon the approval of CHFA's Board of Directors, the applicant will receive a tax credit reservation setting forth the annual credit amount and, if applicable, any additional requirements or concerns referenced in the Board resolution for the reservation of LIHTCs that must be satisfied prior to the execution of a Carryover Allocation Agreement. This reservation must be executed by the applicant and submitted to CHFA with the appropriate Tax Credit Servicing Fee. The reservations will be issued at the end of each funding decision period to all approved applicants.

### **1. Tax Credit Reservation**

The tax credit reservations will be awarded according to ranking within each classification based upon the credits available for the particular funding decision period.

### **2. Carryover Allocation Agreement/IRS Form 8609 Low-Income Housing Credit Allocation and Certification (commonly referred to as an 8609)**

- a. LIHTC Allocations will be made by CHFA for developments placed-in-service during the year of the Tax Credit Reservation by providing an IRS Form(s) 8609 to the developer. When a 9% LIHTC applicant is not able to complete a development and place it in service by the end of the year in which a tax credit award is made, a Carryover Allocation Agreement may be requested to allow the applicant two (2) years to meet these requirements. This request should be made no later than the 1st of November of the year of the tax credit reservation and should include the following:
  - i. The applicant's updated Consolidated Application;
  - ii. 100% complete plans and specifications, if available;

- iii. The applicant's statement of material change;
  - iv. Carryover data sheets, sent by CHFA as blank forms to be completed by the applicant, to include partnership information, a property roster, a financial summary, a subsidy layering checklist, if necessary, and an updated project schedule.
- b. By December 15 of the allocation year and not later than year-end, CHFA will issue a Carryover Allocation Agreement to applicants with credit reservations that have met the submission requirements as determined by CHFA.
- e. In order to be eligible for a Carryover Allocation, the applicant must:
- i. Form its ownership entity (i.e. file a certificate of limited partnership or other organizational document with the Secretary of the State);
  - ii. Maintain development financial feasibility as determined by CHFA;
  - iii. Have any material change accepted by CHFA;
  - iv. Provide all requested information as determined by CHFA; and
  - v. Remit the balance of the Tax Credit Servicing Fee.

### 3. Ten Percent Test

Within 12 months of an executed Carryover Allocation Agreement, an Applicant must demonstrate that the Applicant has spent or incurred at least 10% of the development's reasonably expected basis. A certification prepared by an independent certified public accountant or an attorney must be submitted documenting compliance with the requirements of Section 1.42 – 6(c) of the Code.

For purposes of meeting the 10% test:

- a. CHFA's Tax Credit Servicing Fee is not includable in the development's basis;
- b. For DAF to be included in basis, the applicant must provide reasonable and adequate documentation of the services for which the fee has been paid and accrued;
- c. Reasonable construction interest costs will be recognized by CHFA; and
- d. The schedule of project costs must specify those costs included in the development's basis and must be accompanied by an independent certified public accountant's audit report on the schedule. Such audit must be conducted in accordance with generally accepted auditing standards and the independent auditor's report must be unqualified.



## IX. 4% LIHTC and 9% LIHTC Transactions

### 1. Time Requirements

It is the developer's responsibility to manage all timing requirements to advance a development proposal in a timely manner; achieving a closing and managing the construction process to achieve the placed-in-service target date. Developers that fail to adequately manage these time requirements may be subject to a rescission of a tax credit allocation. Developers should be proactive and provide regular timing updates to CHFA especially if there are anticipated delays that are out of their direct control.

In instances where there are unforeseen timing delays, prior to closing or during the course of construction, a developer may request a voluntary allocation return and re-allocation of 9% LIHTCs. Requests for a re-allocation are considered in CHFA's sole discretion and for extraordinary and uncontrollable circumstances only.

When requesting this return and re-allocation, developers should be prepared to outline the circumstances of project delays as well as to identify and summarize their active steps taken: 1) to anticipate and prevent the delay from having occurred; and 2) to react to unforeseen events once they have occurred.

Delays during the legal due diligence and financial closing process are generally considered foreseeable and adequate cushions should be built into the development process timeline accordingly. Return and re-allocation requests resulting from placed-in-service requirements imposed by an owner or equity provider that are generally more restrictive than those required in IRC §42 will not be considered.

A voluntary return and re-allocation of LIHTCs that includes a material change from the originally awarded proposal may be subject to approval by the CHFA Board of Directors.

### 2. Cost Certifications

Upon a development's completion, the owner must submit General Contractor's and Mortgagor's-LIHTC Cost Certifications documenting the actual total project cost. For additional information, refer to the [CHFA Cost Certification Preparation Guideline](#) on the CHFA website.

### 3. Issuance of an 8609

The 8609 is used to obtain a housing credit allocation from CHFA. A separate 8609 must be issued for each building in a multiple building development.

CHFA will issue 8609(s) upon review and acceptance of the cost certifications. The amount of tax credits originally reserved will be reduced accordingly if the review of the certified costs shows the financing gap is less than the one originally projected.

For developments that were awarded 9% LIHTC, the tax credit amount will generally not change if the certified costs are higher than the estimated project costs, unless the owner applies for an additional allocation due to reasonable unforeseen cost overruns. Applicants that received an initial reservation of 9% LIHTC in a prior year and are seeking de minimis additional tax credits in a subsequent year must contact

CHFA. At its sole discretion CHFA will determine if the request for additional reservation is considered de minimis. The applicant must demonstrate the capacity to secure an equity investment, satisfactory to CHFA. Additionally, the applicant must neither have changed any selection criteria nor made any significant modifications, as determined by CHFA, from the original application. If CHFA determines the request for additional 9% LIHTC reservation exceeds the de minimis level, CHFA may require the applicant to re-apply in a competitive round.

For 4% LIHTC, the final amount of tax credits may be greater than the original estimated amount warranted by a final underwriting review by CHFA if additional improvements were completed.

The final credit amount referenced in the 8609 is based upon the tax credit percentages elected by the owner through a binding agreement, such as the Carryover Allocation Agreement, and subject to the Code.

All outstanding fees must be received prior to the issuance of an 8609.

## **X. Appraisal and Market Study**

CHFA commissions independent, professional market study(ies) and appraisal(s) from an approved list of multifamily rental housing appraisers and market analysts maintained by CHFA for all multifamily rental housing developments being considered for CHFA mortgage financing. For developments awarded LIHTCs without CHFA-issued TEB or CHFA financing, only a market study is required to be accepted by CHFA in its sole discretion prior to the issuance of (1) the 42(m) letter for 4% LIHTCs or (2) the Carryover Allocation Agreement for 9% LIHTCs. CHFA reserves the right to require an appraisal and/or modify its appraisal requirements as may be practical given the circumstances of each transaction. Applicants shall make full non-refundable payment in advance. Refer to the schedule of market study/appraisal fees in the Multifamily Underwriting Standards Summary section of the Multifamily Rental Housing Program Guideline.

## **XI. Compliance Monitoring**

All qualified LIHTC developments are subject to review pursuant to CHFA's compliance monitoring procedures established in the QAP and all other applicable agreements, including Quality Assurance Monitoring as described in the [Supportive Housing Guideline](#), should the development include supportive housing units.

1. Failure to comply with the compliance monitoring procedures is an event of default and treated as noncompliance.
2. Failure to provide supportive housing units or any other development feature for which points were awarded in a competitive round is an event of default and treated as noncompliance.
3. Subsequent to the time of allocation, all applicants/owners shall execute an ELIHC with CHFA and record it in a priority position on the land records. In the case of developments for which CHFA is providing a mortgage loan, the ELIHC shall be executed at the time of the initial loan closing. The ELIHC will include a provision requiring all liens on the property be subordinate to the low-income use restrictions. The ELIHC sets forth the number of low-income and rent restricted units in the development, the parameters defining

a qualified tenant, the resale restrictions, the term that the units will remain qualified, the default and remedies governing the rent restricted units.

4. Should the development fail to place-in-service, CHFA will rescind the tax credits from the owner.
5. Refer to the [LIHTC Compliance Reporting Requirements](#) available on the CHFA website for additional requirements.

## **XII. Changes in Subsidy or Financial Assistance**

Frequently, developments may have the benefit of a project-based rental assistance contract to serve the state's lowest income population. In the event of the loss of project-based rental assistance during the 15-year compliance period, with the prior written approval of CHFA, units may revert to being occupied by individuals and families having an annual income not exceeding 60% AMI at such time. CHFA, in its sole discretion, shall grant such approval.

When reviewing an owner's request to change the terms of the transaction, CHFA will consider changes that address the unique circumstance(s) of each development. Factors that will be considered include, but may not be limited to, the needs of the existing residents; local residential market conditions; the availability of alternative funding resources; and the financial and physical sustainability of the development.

If an owner voluntarily elects to relinquish rental subsidies for the development, then the owner and development remain bound to serve the households at the AMI bands pledged in the original application and no relief is provided.

CHFA will consider requests for compliance/regulatory modification if resources used to provide supportive services are no longer available. If the cost to provide supportive services is being borne by the service provider and the resources to provide those services are no longer available, it is the owner's responsibility to seek replacement resources. CHFA will consider requests to modify or change the scope or the level of services provided to residents based on the degree of available resources only after every effort has been made to replace the provider and retain the level of services. These requests will be considered by CHFA on a case-by-case basis subject to CHFA's sole discretion.

Developments maintaining the cost of supportive services through the development's operating budget may also be eligible for compliance modification if operating costs outside of the control of the owner (for example, taxes, insurance, utilities, etc.) increase to the point of jeopardizing the financial sustainability of the overall development. Again, these requests will be considered based on the needs of the development and on a case-by case basis subject to CHFA's sole discretion.

Developments that agreed to establish a funding reserve or developer guarantee solely for the funding of the supportive services during the 15-year compliance period will not be eligible for compliance relief.

The loss of rental assistance and/or funding for supportive services units may allow owners to request for permission to rent to higher-income individuals and families as stated above. However, the loss of rental assistance will not allow the owners to terminate supportive services to residents.

### **XIII. Application and Tax Credit Servicing Fee Schedule**

#### 1. Application Fees

Refer to the CHFA Multifamily Underwriting Standards Summary section of the Multifamily Rental Housing Program Guideline for applicable application fees.

#### 2. Third-party Fees

Refer to the CHFA Multifamily Underwriting Standards Summary section of the Multifamily Rental Housing Program Guideline for applicable third-party fees, such as fees to be paid in advance for the appraisal, market study, environmental study analysis or other review as may be determined to be necessary to complete application requirements and CHFA’s due diligence.

#### 3. Tax Credit Servicing Fees

##### a. 9% LIHTC

Applicants must pay 25% of the tax credit servicing fee to CHFA with the return of the letter indicating acknowledgement of the reservation. The balance of the fee must be paid prior to the final execution of the Carryover Allocation Agreement. Adjustments to this payment schedule will be considered on a case by case basis and will be notated in the Reservation Letter and/or Carryover Allocation Agreement.

##### b. 4% LIHTC

Applicants must pay the tax credit servicing fee at the earlier of the construction loan closing or the close of syndication, or prior to issuance of a final ELIHC. Adjustments to this payment schedule may be considered on a case by case basis, however, 8609s will not be issued until the fee is paid in full.

The tax credit servicing fee is nonrefundable unless the development fails to be placed-in-service and the owner enters into an agreement with CHFA to return the LIHTCs. CHFA reserves the right to impose additional fees at any time, for compliance monitoring or other purposes, to implement the requirements of the Code.

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For additional information please refer to the Procedures, LIHTC - Glossary of Terms, Supportive Housing Guideline, Opportunity Guideline, and the current Multifamily Standards and Guidelines. Any questions may be sent via email to: [multifamilydevelopment@chfa.org](mailto:multifamilydevelopment@chfa.org).

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<sup>i</sup> The LIHTC Program Overview session, which CHFA presents annually for potential applicants and interested parties, provides information from CHFA, Connecticut Department of Housing (DOH) and other partner agencies on the upcoming LIHTC funding round. There is time reserved at the end of the session for questions and answers.

<sup>ii</sup> Reference may be made to [IRS information document](#) and the [Office of the Law Revision Counsel United States Code](#) for information that may provide helpful background.