

**STATE OF DELAWARE
2002 LOW INCOME HOUSING TAX CREDITS**

QUALIFIED ALLOCATION PLAN

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LOW INCOME HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN

Introduction

The federal Low Income Housing Tax Credit program was established by Section 252 of the Tax Reform Act of 1986 and was codified as Section 42 of the Internal Revenue Code of 1986 as amended.

The Revenue Reconciliation Act of 1989 amended IRC Section 42 by adding Section 42(m) that requires allocating agencies to allocate low income housing tax credits pursuant to a Qualified Allocation Plan (QAP). The Delaware State Housing Authority (DSHA) is the allocating agency for the State of Delaware. The following Qualified Allocation Plan represents the standards and procedures used by DSHA to perform its allocation and monitoring responsibilities.

Section 42(m) states...

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

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

- a) Certain Selection Criteria must be used: The selection criteria set forth in a qualified allocation plan must include:
- i. project location
 - ii. housing needs characteristics
 - iii. project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan
 - iv. sponsor characteristics
 - v. tenant populations with special needs housing
 - vi. public housing waiting lists
 - vii. tenant populations of individuals with children
 - viii. projects intended for eventual tenant ownership

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

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

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

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

	<u>Maximum Annual Credit</u> Percentage Rate
<p><u>New construction or substantial rehabilitation of existing housing</u> – Credit is based on qualified development costs excluding land, acquisition costs and other non-depreciable costs as defined under Section 42 of the IRC. Qualified expenditures for substantial rehabilitation must be the greater of \$3,000 of qualified basis per low-income unit or 10% of unadjusted basis. DSHA has further defined substantial rehabilitation in the definition section of the QAP, and DSHA reserves the right to further adjust the minimum substantial rehabilitation requirement.</p>	70% present value
<p><u>New construction or substantial rehabilitation of existing housing receiving a federal subsidy</u> - A federal subsidy includes a tax-exempt obligation or loan funded in whole or part with federal funds where the interest rate on the loan is less than prevailing Treasury interest rates. Example: RHS Section 515 developments or Rental Rehabilitation developments. For purposes of the Credit program, a CDBG loan is not considered to be a federal subsidy and is eligible for the 70% present value Credit percentage rate. Also, developments receiving a loan under the HOME program are eligible for the 70% present value Credit as long as at least 40% of the units in each building serve families at or below 50% of median gross income.</p>	30% present value

Pursuant to IRC Section 42(d)(5)(c), in the case of any building located in a qualified census tract or difficult development area,

the eligible basis of such building shall be 130% of such basis. Buildings receiving assistance under the HOME Investment Partnership Act are not eligible for such 130% basis if HOME Program funds are loaned in whole or in part if an interest rate payable on such loan is less than the Applicable Federal Rate (AFR) in effect as of the date on which the loan was made.

Acquisition cost of existing housing – Basis of Credit is on the cost of acquisition minus land value. The 30% present value Credit for acquisition of an existing building can only be claimed if at least minimum required substantial rehabilitation (greater of \$3,000 per low-income unit or 10% of unadjusted basis) is being done at the same time. DSHA has further defined substantial rehabilitation in the definition section of this QAP, and DSHA reserves the right to further adjust the minimum substantial rehabilitation requirement. Developments are eligible for 30% present value Credit only if the date of acquisition is 10 years or more after the later of the date the building was last placed in service or the date of the most recent nonqualified substantial improvements were made (may be waived for troubled federally-assisted developments).

An owner or investor's Credit allocation generally begins the year the development is placed in service. A development shall be considered to be Placed In Service (PIS) when it is ready for occupancy. The Credit is a dollar for dollar tax reduction of an individual investor/owner's active income, up to the \$25,000 maximum deduction of real estate activity losses. Credits can be used without limit to reduce taxes on passive income from rental property, which includes cash flow income and capital gains on a sale. Corporate investors, except for Sub-Chapter S corporations and those that provide personal services, are not subject to the passive loss limitations or the limits on utilization of the Credit.

Taxpayers must report annually to the Treasury Department the date the building was placed in service, the qualified basis (eligible costs of development multiplied by percentage of the development that has qualified low-income units), the Credit percentage permitted to be taken into account by DSHA, and other related information required by the Treasury Department. The taxpayer must certify that the development has complied with the minimum eligibility requirements for low-income units for the entire year. This reporting information is due to the Treasury Department on the same day as the federal tax returns are due, beginning with the end of the first tax year the Credit was claimed.

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

Early disposition of a building is a recapture event unless the owner posts a satisfactory bond with the IRS and it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the compliance period.

The Low Income Housing Tax Credit Program is complex. In addition, changes in the program adopted by Congress in 1989, 1990, 1993 and 2000 will require careful review by persons who have used the program in the past. It is suggested that project sponsors interested in applying for a Tax Credit allocation contact their tax accountant and/or attorney before pursuing the program.

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

DESCRIPTION OF HOUSING NEEDS AND PRIORITIES

In 1996, Legg Mason Realty Group out of Baltimore completed a five-year statewide housing needs assessment for the Delaware State Housing Authority. Since that time, the Housing Authority has directed its resources towards meeting those identified needs. The following is an overview of the needs in 1996 - as they relate to renter households. Finally, there is a brief synopsis of assistance provided since 1996 and the housing needs that still remain.

In summary, the greatest need for affordable housing was in the existing housing stock. At least 12,055 housing units, or 4.3 percent of the State's total housing inventory, were in need of substantial rehabilitation. Of this number 6,533 were rental units or 8.5 percent of the State's rental inventory. Some of these substandard units were found to be within rental communities as well as single-family homes. Other needs found within the existing housing stock were that 9,615 renter households were earning less than 50 percent of the area median income and paying more than 50 percent of their income toward housing expenses. These precarious socioeconomic conditions placed households at risk of either being forced into homelessness or being unable to maintain their property in a safe and habitable condition.

Demand for new rental construction to accommodate new household growth was projected to total 2,000 affordable units over five years: an average of approximately 400 units per year. Over half of these units were needed for very low-income families, for whom it is impossible to assist without a subsidy.

Another area of need identified in the 1996 study was housing for special populations. While most people with special needs were housed, at the time, there were 7,596 persons identified as requiring special needs housing. Of this number, 3,302 persons were housed leaving an unmet gap of 4,294 units needed. Since then, 1,050 units have been provided to meet that need. However, there remains 3,244 persons Statewide that require special needs housing.

The following table demonstrates what type of rental assistance has been provided compared to the original needs identified in the 1996 study. For substandard housing, while much has been accomplished (541 multi-family rental units), there are still 5,981 units left that require rehabilitation

throughout the State. For rental new construction, there have been approximately 2,095 newly constructed units produced Statewide. However, there is still a need for 500 new construction subsidized units that are affordable to very-low income families in New Castle County (excluding Wilmington) and 500 units in Sussex County. In addition, 170 new units for the elderly are still needed in New Castle County.

	City of Wilmington				New Castle County				Kent County				Sussex County			
	Fam V-Low	Fam Low	Elderly	Rehab	Fam V-Low	Fam Low	Elderly	Rehab	Fam V-Low	Fam Low	Elderly	Rehab	Fam V-Low	Fam Low	Elderly	Rehab
1996	0	0	0	0	0	162	0	0	20	54	76	20	0	70	27	0
1997	0	0	0	0	0	70	0	0	0	0	0	33	0	138	60	0
1998	0	0	0	0	0	18	0	0	0	0	60	95	0	128	51	0
1999	0	0	78	0	0	0	0	111	0	0	52	18	0	128	137	0
2000	0	36	0	0	0	371	0	0	0	0	60	0	0	0	41	0
2001	0	0	0	0	0	0	0	130	0	0	0	95	0	0	42	0
2002	0	0	0	50	0	0	80	0	0	0	0	0	0	60	76	0
GRAND UNIT TOTAL	0	36	78	50	0	621	80	241	20	54	248	261	0	524	434	0
FIVE YEAR PROJECTED NEEDS	0	0	0	1876	500	0	250	2198	0	0	150	1209	500	500	100	1248

SOURCE: 1996 Statewide Housing Needs Assessment, Legg Mason Realty Group; and Housing Assistance Production Report (years 1996-2001), Delaware State Housing Authority

NEEDS ASSESSMENT SUMMARY

Statewide

- Rehabilitation is needed to make 5,981 substandard units more affordable.*
- There is a need for 3,244 units of special population housing statewide. **

Wilmington

See Description of Housing Needs and Priorities

New Castle County

- There is a need for 500 units of new construction for very low-income families.
- There is a need for 170 units of new construction for low- and very low-income elderly households.

See Description of Housing Needs and Priorities

Kent

See Description of Housing Needs and Priorities

Sussex

- There is a need for 500 units of new construction for very low-income families.

See Description of Housing Needs and Priorities

NOTES:

* In 1996, there were 6,533 rental units that were substandard. Since then, 542 units in rental communities have been rehabilitated leaving a current gap of 5,981.

** For special populations in 1996, there was a gap between units needed and units provided of 4,294 units. Since then, 1,050 units have been provided leaving a current gap of 3,244.

TAX CREDIT RESERVATIONS AND SET-ASIDES

Geographic Reservations

To insure geographic distribution of Low Income Housing Tax Credits across the State, and by and among localities, DSHA has set up two separate Target Area Pools for allocating tax credits as well as a third pool for Non-Profit Organizations.

Developments will compete only within their respective Pools. Developments will be ranked within those Pools and the highest scoring developments in each Pool will be separately evaluated to determine the amount of tax credits required. Each year DSHA shall establish the percentage of available credits for each Pool based on DSHA'S development goals, need for affordable housing in each area, and compliance with Livable Delaware Planning Strategies.

Non-Profit Pool

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

See definition of a qualified non-profit organization.

The estimated percentages for 2002 are based on the annual tax credit authority available. The actual dollar amount will exclude any forward commitments issued in 2001.

<u>Target Area</u>	<u>New Castle County</u>	<u>% of Annual Tax Credit Authority</u>
Pool One	New Castle County Including the City of Wilmington	Forty-five percent (45%)

<u>Target Area</u>	<u>Kent & Sussex Counties¹</u>	<u>% of Annual Tax Credit Authority</u>
Pool Two	Kent County and Sussex County excluding: Smyrna, Dover, Milford, Seaford, Millsboro and Laurel/Delmar	Forty-five percent (45%)

<u>Non-Profit Pool</u>		<u>% of Annual Tax Credit Authority</u>
	All Eligible Non-Profit Organizations	Ten percent (10%)

Rural Set-aside:

In order to address the housing needs of Delaware’s rural communities, fifteen percent (15%) of the credit available in Pool Two shall be set aside for Rural Development. This set-aside is reserved for developments receiving funding through the U.S. Department of Agriculture’s Rural Development Section 515 multi-family program and RD’s 514-516 Farm Labor Housing Program. In order to be eligible to compete within this set-aside, applicants must demonstrate that an application for rental assistance as well as capital assistance under the above programs has been made. If there is insufficient demand for the rural set aside, credits remaining in the rural set-aside shall be allocated to other developments competing within Pool Two.

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

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

¹ **Special Needs Housing, RHS515 Housing, and Preservation At-Risk Housing (see definitions) are exempted from this exclusion.**

Credits for all applicants will be limited to: no more than 1) Thirty percent (30%) 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 forty percent (40%) of the total annual credit authority available during any allocation year. A development entity that reaches 40% of the total allocation dollars available, will have its next ranked development eliminated.

Once a development has received an allocation of credits, additional application(s) for credits for a subsequent development on the same or a contiguous site may not be submitted until such time as the original development is substantially complete and is at least ninety (90%) rented.

Any unused credits left in Pool 1 and/or Pool 2, will be combined and Credits will be provided to the highest ranking project in either Pool that requires the least amount of credits.

DEFINITIONS

Affordable

A unit is considered affordable if the cost of housing (rent plus utilities) does not exceed 30% of a low-income household's income, adjusted for family size.

Code

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

Community Revitalization Plan

A municipal, county, or regional plan that has been formally endorsed by a governing body. This includes, but is not limited to, a municipal and/or county Consolidated Plan, local or regional redevelopment plan, neighborhood redevelopment plan as endorsed and approved by local government, or a development that is located in an Enterprise Community.

Complete Application

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

Development Team

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

Developer Fee

A developer fee is the amount of identified uses of development funds paid as compensation for developing the proposed housing. This fee covers the overhead and profit of the developer. The amount of developer fee is limited to a maximum of 10% of total development cost excluding developer’s fee and land cost up to \$5,000,000 plus 5% on development costs exceeding \$5,000,000.

Elderly Development

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

Eligible Basis Limitations

Eligible basis limits are limitations on total eligible basis, excluding the QCT and DDA 30% adjustment factors based on number of bedrooms. The limits replicate the 221(d) 3 HUD limits as follows:

<u>0 bedroom</u>	<u>1 Bedroom</u>	<u>2 Bedroom</u>	<u>3 bedroom</u>	<u>4 bedroom</u>
\$70,092	\$80,346	\$97,701	\$126,391	\$138,730

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

Large Family Unit

A unit within a non-age-restricted development containing three or more bedrooms, at least one and one half baths, and consisting of a minimum of 1050 square feet.

Low-Income Unit

As defined by IRC Section 42(I)(3). A family is considered low income if their income is less than 60% of median income, adjusted for family size.

Market Study

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

The market analyst shall certify that:

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

Mixed Income/Market-Rate Development

A mixed income/market rate development is one where at least 20% and no more than 50% of the total units in the development are tax credit rent-restricted and income-restricted.

New Units

The creation of additional affordable rent and income restricted units. Completely vacant and/or abandoned structures are new units for the purpose of this definition.

Preservation – Affordable Housing

Any occupied affordable housing development that is in need of substantial rehabilitation (see definition of substantial rehabilitation).

Preservation - At Risk Housing

Any existing, currently occupied subsidized affordable housing development (see definition of subsidized) that is at risk of losing its affordability through loss of income and/or rent restrictions and is in need of substantial rehabilitation. Proof of imminent expiration of affordability controls (within three years) is required.

Qualified Census Tract

Defined in Section 42(d)(5)(C) of the Code means a census tract 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. A listing of Qualified Census Tracts is included within the application package.

Qualified Non-profit Organization:

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

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

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

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

Special Needs Housing

Developments which shall rent units in the development to one or more of the targeted special needs populations referred to below and must make available a minimum of three services specifically addressing the needs of the identified group. Special needs populations include individuals and families who are in need of certain types of home and/or community based supportive services in order to remain capable of independent living in communities. Supportive services range across a wide continuum of care and will vary from person to person depending on their particular physical, psycho-social and or mental limitations. Targeted special needs populations are:

- Persons with HIV/AIDS related illness
- Homeless
- Mentally ill
- Persons with physical disabilities
- Mentally retarded/developmentally disabled
- Migrant and Seasonal Farmworkers

Social Services:

A development which includes a plan and provides one or more of the following types of services to improve the quality of life of the residents of the development. The services must be affordable, appropriate, and available. Examples of services that may be included are:

- Parenting programs
- Literacy programs
- Nutritional services
- Transportation services
- Personal care
- Congregate meals
- Counseling programs
- Adult Day Care
- Substance Abuse Counseling or Referral

DSHA allows for reasonable substitutions of services at DSHA'S discretion.

Substantial Rehabilitation

A development is considered to be undergoing substantial rehabilitation if the minimum rehabilitation cost per unit is at least \$20,000 of hard cost and meets the following conditions:

Condition One: The building's most recent use has been residential.

Condition Two: One hundred percent (100%) of the units within the existing structural framing are being rehabilitated.

Developments with rehabilitation and new construction combined will not be considered rehabilitation developments if more than 25% new units are added.

Subsidized Housing

Any housing that presently receives HUD or equivalent rental subsidies.

THRESHOLD REQUIREMENTS

Applications shall meet all of the threshold eligibility requirements listed in this section in order to be admitted into a Pool.

IRS Threshold Requirements ²

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

The number of housing units set aside for low-income households must be selected at time of application for Credit and maintained for the entire compliance period. Once made the decision is irrevocable.

- 2) Units must be rent-restricted with gross rents for a qualifying unit at or below 30% of the imputed income limitation applicable to such units. If the costs of any utilities, excluding telephone, are paid directly by the tenant(s), the gross rent must include the applicable utility allowance. Utility allowances are determined by HUD and local housing authorities. A development can use these allowances or when applicable, justify their own by using local utility company estimates. HUD and local housing authority utility allowances or local utility company estimates must be updated annually.
- 3) The Imputed Income Limitation applicable to a unit is the income limitation which would apply to an individual occupying the unit if the number of individuals occupying the unit were as follows:
 - a) SRO or efficiency (no separate bedroom) – 1 person

² If HOME funds are received for a development and included as part of eligible basis, at least (40%) forty percent of the units in a building are to be occupied by households with incomes at or below 50% of median gross income, adjusted for family size, for each county.

- b) One or more separate bedrooms - 1.5 individuals for each separate bedroom.
- 4) Tax Credit units must be developed and maintained in equivalent quality and square footage as non-tax credit units.
- 5) All units must meet applicable building and/or housing codes.

DSHA Threshold Requirements

- 1) All developments must be located in Communities, Developing Areas, or Secondary Developing Areas as defined by Livable Delaware. While development proposals are permitted in Environmentally Sensitive areas, pursuant to Livable Delaware, special consideration should be made to protecting the environment. Livable Delaware Strategies and Maps can be accessed on the web at <http://state.de.us/planning/shape/strategy/index.htm>
- 2) All applicants must comply with the provisions of any federal, state or local law prohibiting discrimination in housing on the grounds of race, color, sex, creed, handicap/disability and familial status, sexual orientation, or national origin, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 88 352, 78 Stat. 241), all requirements imposed by or pursuant to the Regulations of HUD 24 CFR Subtitle A, Part 100 issued pursuant to that title; regulations issued pursuant to Executive Order 11063, and Title VII of the 19068 Civil Rights Act, as amended by the Fair Housing Amendment Act (Public Law 100-430) and Americans with Disabilities Act (Public Law 101-336). In addition, recipients of federal funds (i.e. RHS HUD financing) must comply with Section 504 of The Rehabilitation Act of 1973, as amended (29 U.S.C. 794).
- 3) The minimum family size eligible for each affordable housing unit has been established by DSHA. The minimums are as follows: Efficiency – 1 person; one bedroom – 1 person; two bedrooms – 2 persons; three bedrooms – 3 persons; and four bedrooms – 6 persons.³

³ DSHA reserves the right to waive minimum family size eligibility for two bedroom units when it is satisfied that conditions exist that indicate difficulties in finding qualified families to rent two-bedroom units. Such conditions include, but are not limited to: Market condition shifts; low absorption rates; no waiting lists; large number of one person household applicants; excessive vacancies for extended periods of time and increased elderly household demand. If conditions can be documented, a development owner may apply in writing for a waiver. DSHA, may elect to permit occupancy by one person in a two-bedroom unit for a maximum of 10% of the total number of two-bedroom units in a property. Requests for the waiver will only be accepted 24 months after development has reached 100% occupancy. For elderly only properties, one person households may be eligible for two-bedroom units. However, priority must be given to two person elderly households on the waiting list.

4) DSHA has established a minimum gross square footage requirement for new construction and conversion of non-residential units to residential use that is based on bedroom size. The following gross square footage dimensions are the minimum required by bedroom: one bedroom – 700 sq. ft; two bedrooms – 850 sq. ft.; three bedroom 1050 square feet, efficiencies 500 sq. ft. and SRO's 100 sq. ft.⁴

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

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

6) Local and Community Notice - Applicants must notify, via certified mail, the local executive, council or manager having jurisdiction over the location of the proposed development, 30 days prior to submitting the application. Applicant must also notify, via certified mail, all neighborhood associations, civic groups and community organizations having resident members living within 1/4 mile of the proposed development 30 days prior to submitting the application. In New Castle County such neighborhood associations, civic groups and community organizations are designated in the Civic Association Directory for New Castle County which is available through the New Castle County Office of Community Governing or in the Community Organization Guide, City of Wilmington, Office of Planning. For Kent and Sussex counties, if lists do not exist, developer must exercise due diligence, including specific contact with local legislators to obtain information on specific and legitimate groups in notifying the appropriate surrounding communities. Legitimate (organized with by-laws) neighborhood associations, civic groups and community organizations must be in existence at the time of notification. All letters providing notice pursuant to this section shall be substantially in the same form as provided in the LIHTC

⁴ The minimum gross square footage is measured from the face of the exterior sheathing to the center line of of the party wall (exclusive of storage and common areas). Storage and common areas are defined as areas contiguous to units but not part of the units' living area such as attached storage sheds, storage rooms, stairs and halls in common areas.

application. Applications must contain a certification by the applicant of compliance with this section, as well as documented proof of compliance. DSHA reserves the right to reject any application where the notice does not conform to the form notice as provided by DSHA and/or otherwise failing to comply with the provisions of the local government and community notices requirements.

7) Development Team - Applicants are eligible to compete only if they do not:

- 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 or an affiliated entity who has failed to utilize credit within program time guidelines causing the recapture of said credits.
- c) have a general partner who has been removed or withdrawn under threat of removal from a tax credit development.
- d) have a general partner, voting member, developer or affiliated entity that owns a managing or controlling interest in any LIHTC development that has failed to submit annual development certifications and/or is delinquent in payment of monitoring or other required LIHTC fees.
- e) has failed to fulfill any obligations committed to in a previous application for LIHTC that has not been corrected to DSHA's satisfaction.
- f) has had IRS Form 8823, "Low Income Housing Tax Credit Agencies Report of Noncompliance" filed on a development during previous year(s) that has not been corrected to DSHA's satisfaction.
- g) has any development that is not complying with its Declaration of Restrictive Covenant Provision.

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

8) Site Control - Sponsors must have sufficient site control to enable the development to move forward if a 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.

9) Local Zoning/Planning Approvals - Applicants must submit documentation that the following approvals are in place or can be obtained without jeopardizing an allocation of credits. -

a) Zoning - Properties must be zoned for its intended use. If variance or exception is required, applicants must provide documentation illustrating the present status of the proposed zoning change, the local planning and zoning process and must submit evidence that appropriate approval can be obtained within the required period.

b) If no zoning or site plan approval is required; applicant must submit a letter from the appropriate municipal official indicating such or the applicant or developer may provide such certification.

10) Financial Feasibility - Applicant shall provide the financing plan for the proposed development and shall demonstrate that the proposed development is financially feasible and viable as a qualified low-income housing development throughout the extended use period. The housing credit dollar amount allocated to a development shall not exceed the amount DSHA determines is necessary for the financial feasibility of the development. DSHA's underwriting criteria are included in the application.

If all funding sources planned for the development have not been committed, proof must be provided that construction, permanent and gap funding source applications have been submitted and letters of intent must be provided evidencing a funding source's interest in financing the development. Applicants seeking to fill a funding gap and coming out of pocket shall submit a certification that the applicant has the amount of cash or other resources, as approved by DSHA, required to fill the funding gap. If a developer fee pledge is to be utilized to fill a funding gap, no more than 50% of the developer fee may be used.

DSHA reserves the right, based on documentation submitted and DSHA's underwriting criteria as well as the submitted market analysis, to determine that a development is not viable and/or

feasible. If such determination is made, applications will be deemed ineligible.

All developments must adhere to minimum construction standards regardless of financing source(s) (including tax-exempt bond financing). These standards have been outlined in the Qualified Allocation Plan Attachments. Based on these minimum standards, DSHA reserves the right to determine a development is ineligible to compete.

11) 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. Submission must include either: preliminary income certifications for tenants residing in occupied units demonstrating that they are income eligible and/or a certified letter from said residents indicating their willingness to be relocated. If preliminary income certifications or a certified letter cannot be obtained, applicants must assume the percentage of units that are not tax credit eligible is the lesser of 20% of all units or the percentage of units that cannot be certified eligible.

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

RANKING AND POINTS

POINT SYSTEM

Pool One – New Castle County

Increase in the Compliance Period

For increases in the compliance period, zero to two (0 – 2) points shall be awarded. The minimum term of low-income occupancy commitment is thirty (30) years - a fifteen- (15) year compliance period plus a fifteen- (15) year extended use period. The owner may choose to exercise opt-out provisions provided under federal law after the compliance period (year 15). One point will be awarded for every five-year period the compliance period is extended during which the owner may not choose to exercise its opt out provision. Maximum points are awarded for a twenty-five (25) year compliance period with a fifteen (15) year extended use period.

or

Two (2) points will be awarded to developments that will be converted to home ownership for the residents after the initial fifteen (15) year compliance period has expired. Syndication documents must reflect the conversion.

Developments Serving the Lowest Income Tenants

Two to ten (2 – 10) points will be awarded to developments whose percentage of tax credit units are affordable to individuals and families whose incomes are at or below fifty percent (50%) of median income.

10% – 25%	2
26% - 50%	4
51% – 65%	6
66% – 80%	8
81% - 100%	10

Mixed Income/Market Rate

Five (5) points will be awarded to a development where at least 20% and no more than 50% of the total units in the development are rent-restricted and income restricted.

Capacity of Development Team

Zero to eight (0-8) points will be awarded based on the demonstrated relevant experience and qualifications of the developer and management entity. All team members must be disclosed at time of application. The members of the team, in addition to the developer and management entity, include the applicant/owner, co-developer, consultant, owner, general contractor, architect, surveyor, real estate and tax counsel. Members of the development must demonstrate experience in the satisfactory development of affordable housing, experience in the management of affordable housing and must have the financial capacity to carry the development through to completion. DSHA reserves the right to determine "satisfactory" development experience.

a) General Partner/Developer Experience: Up to five (5) points shall be awarded based on the number of Low Income Housing Tax Credit Properties developed by the general partner and/or developer. Note: "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. "Developed" is defined as having gone to permanent closing on a development with an acceptable cost certification.

2 – 4 developments	2 points
5 or more developments	5 points

b) Management Agent's Experience: Up to three points (3) shall be awarded based on the number of Low Income Housing Tax Credit and subsidized developments currently being managed.

1 – 4 developments	1 points
5 – 15 developments	2 points
More than 15 developments	3 points

If other than the owner or developer's experience is being utilized to qualify for points, a signed agreement and/or contract for services must be provided describing the role each entity will play in the development and/or the management of the development. DSHA's Management Agent Qualification form must be submitted with the application. DSHA reserves the right to determine appropriate involvement.

Special Needs Housing

Developments that provide permanent housing for persons with special needs are awarded five (5) points. Special needs populations are:

- Persons with HIV/AIDS related illness
- Homeless
- Mentally ill
- Persons with physical disabilities
- Mentally retarded/developmentally disabled
- Migrant and Seasonal Farmworkers

In order to qualify for points in this category, 100% of the property must be made available for the special needs population. Additionally, a minimum of three (3) appropriate services must be provided free of charge to the residents. Documentation of how these services will be paid for must be provided.

Local Contribution

Three (3) points are awarded for developments that receive financial support from local government. A local contribution must generally reduce the development or operating costs of a development (amounting to at least 2% of total development costs). This can be in the form of municipal or county funding or local public housing authority capital funding, waiving of building permit fees, granting of a tax abatement, provision of five-year rental subsidies, donation of land or land provided at a nominal price, or some other documented form of assistance, as approved by DSHA, that financially reduces the development cost or reduces the operating cost of the project over a five-year period.

Local Support

Five (5) points will be awarded for an application that receives a letter of support from the local government indicating its support of the development, and endorsing the development in the current round of competition. The letter must precisely reflect the development as submitted with the application without modification or qualification.

Leveraging of Non-DSHA Administered Resources

To the extent that DSHA controlled funds, including tax credits, HOME funds and Housing Development Funds, are used to leverage other funds, zero to ten (0-10) points will be awarded for the greater leveraging of funds based on the unadjusted qualified basis calculations.

Percent of Leveraging

More than fifty percent (50%) of the development's permanent funding comes from other than DSHA sources 10 points

From thirty percent (30%) to forty-nine percent (49%) of the development's permanent funding comes from other than DSHA sources 7 points

Less than thirty percent (30%) of the development's permanent funding comes from other than DSHA sources 3 points

All permanent funding is provided through DSHA programs 0 points

Tax Credit Equity will be considered a DSHA resource. In order to compare all developments equally, an equity factor will be used based on current market rates, which will be listed in the current year application package. If additional tax credit equity is received in excess of the equity factor used above, this additional equity will be considered a non-DSHA resource.

Preservation of At-Risk Housing

Five (5) points will be awarded for Preservation of At-Risk Housing or the Preservation of Affordable Housing (see definitions).

Or

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, properties must already be on the National Historic Register at the time of application.

A development cannot be awarded points in both of these categories.

Public Housing and Section 8 Waiting Lists

One (1) point will be awarded for developments that are utilizing local public housing waiting lists and/or Section 8 existing waiting lists. The application must contain a letter from the appropriate agency in order to receive this point.

Provision of Social Services

The provision of social and support services is an integral part of any development to improve the quality of life of the residents of the development. Services must be affordable, appropriate, available and accessible to the development's tenants. One (1) point will be awarded for each service up to a maximum of three (3) points. Services should be actively linked to the residents and not simply provided to the community at large and must be provided on-site.

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

- _ Qualifications of the social service organizations that will be utilized at the property, including their history, capacity and experience.
- _ A program description including the details and goals of the programs for the residents.
- _ Contracts or commitment letters from each social service provider must also be attached.

Examples of services include but are not limited to:

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

Site and Neighborhood Standards

Two (2) points will be awarded if the development site is determined to be suitable for the proposed development without excessive (as determined by DSHA) geo-technical, environmental or utility infrastructure expenditures.

One (1) point will be awarded for each of the following factors up to a maximum of seven (7) points.

Target Area – New Castle County: Pool One:

1. Walking distance to retail facilities (1/4 mile)
2. Area supports a large number of employment opportunities
3. Daycare facilities are near the site or near the employment centers, or specialized services near the site
4. Medical center within five miles
5. Bus line within walking distance
6. Adjacent to major road arteries
7. No other low income housing in immediate area (within 3 block area)
8. No market rate rental housing in immediate (within 3 block area)
9. Site located in economically mixed community as defined by Census Data
10. Site within residential area (not industrial)
11. Within one (1) mile of entertainment venues, i.e. movie theaters, restaurants, etc.
12. Close to or in a town center (within 1/4 mile)
13. Within walking distance to schools (family developments only)

Development and Unit Amenities

All units must meet Minimum Construction Standards established by DSHA. A maximum of five (5) points will be awarded to those developments that exceed the minimum standards. One (1) point will be awarded for each additional amenity provided up to five points.

These include but are not limited to:

- Laundry facilities on site
- Community Center on site
- Separate office space
- Maintenance Building (Detached)
- Designated Open Areas/Community Space

Design features that are sensitive to minimizing energy consumption
On site daycare (family developments only)
On site senior care (elderly developments only)

Substitutions are allowable at DSHA's discretion.

Community Revitalization Plan

Five (5) points will be awarded if the development is clearly identified and is included in an approved Community Revitalization Plan.

Qualified Census Tract

Five (5) points will be awarded to developments that are located within a HUD identified Qualified Census Tract.

Large Family Units

Zero to ten (0 -10) points will be awarded to developments based on the percentage of qualified tax credit units meeting the definition of a large family unit. Points are based on the percentage of large family units with respect to the total number of low-income units. For new units, points are maximized when large family units make up 30% of the low-income units. For rehabilitation developments, points are maximized in this category when 15% of the low-income units meet the large family unit definition.

Example: For new units: ____% of tax credit eligible units which consist of large family units x .32.

For rehabilitation units: _____% of tax credit eligible units that consist of large family units x .64.

NOTE: For calculating purposes, drop the decimal point for percentage of tax credit eligible units (i.e. 30% = .30). Points will be rounded up or down to the nearest whole number.

POINT SYSTEM FOR POOL TWO – KENT AND SUSSEX COUNTIES

All points are the same as for Pool One with the following exception:

Site and Neighborhood Standards – Pool Two – Kent and Sussex Counties

One (1) point will be awarded for each of the following factors for a maximum of seven (7) points.

1. Within one mile of retail facilities
2. Access to employment opportunities within area
3. Daycare facilities are near the site or near the employment centers, or specialized services near the site
4. Medical center within fifteen miles
5. Public transportation within walking distance
6. Adjacent to major road arteries
7. No other low income housing in immediate area
8. No market rate rental housing in immediate area
9. Site located in economically mixed community as defined by Census Data
10. Site is predominantly residential
11. Within (10) miles of entertainment venues, i.e. movie theaters, restaurants, etc.
12. Close to or in a town center (within one mile)
13. Within walking distance to schools (family developments only)

POINT SYSTEM FOR NON-PROFIT POOL:

All points are the same as for Pool Two (Kent and Sussex Counties) with the following exception:

Points for Site and Neighborhood Standards will be calculated based on the location of the development (New Castle County or Kent and Sussex Counties).

TIEBREAKERS

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

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

- a) If competing developments within a given pool have a tie score, a tax credit reservation shall be awarded to the application with the lowest amount of low income housing tax credits (unadjusted for the 130 percent QCT or DDA bonus) per low-income bedroom.
- b) If there is still a tie score after the first tiebreaker, the tax credit reservation shall be awarded to the application with a lower total development cost per bedroom.

APPLICATION PROCESS

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

Applications must be submitted to the DELAWARE STATE HOUSING AUTHORITY, 820 N. French Street, Wilmington, Delaware 19801 or 18 The Green, Dover, Delaware 19903, **no later than 3:00 p.m. on April 12, 2002**. Late submissions will not be accepted. Two complete applications must be submitted, and an additional three completed applications must be submitted if applying for Housing Development Fund Loans. All applications must have original signatures.

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

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

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

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

THE DELAWARE FREEDOM OF INFORMATION ACT

By submitting this Application, the applicant acknowledges and agrees that the entire Application, including but not limited to the 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. By submitting this Application, the applicant further acknowledges and agrees that the entire Application is subject to public examination and copying pursuant to FOIA and any privacy rights otherwise applicable are hereby waived.

The Application should be comprehensive in addressing all information necessary for a responsible funding decision. However, 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. Notwithstanding the above, any information obtained from the IRS is not subject to FOIA and will not otherwise be disclosed by DSHA pursuant to a Memorandum of Understanding between DSHA and the IRS.

REVIEW AND SELECTION PROCESS

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

DSHA will notify, via certified mail, the chief executive officer having jurisdiction over the location of any application meeting the minimum threshold eligibility requirements. DSHA will also notify, via certified mail, all neighborhood associations, civic groups and community organizations having resident members living within $\frac{1}{4}$ mile of any application meeting the minimum threshold eligibility requirements, provided such neighborhood associations, civic groups, and community organizations are designated on DSHA's list of neighborhood associations, civic groups, and community organizations. Such notices will indicate that the applicant has met the minimum threshold requirements under the Plan and generally explain the process for reviewing applications for the possible awarding of tax credits.

DSHA will score the developments strictly in accordance with the Qualified Allocation Plan.

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

A development cannot be allocated Credits in an amount that exceeds the amount necessary to make the development feasible. Therefore, the amount of Credit allocated to the development may change from initial Credit reservation. The final Credit allocation will take place at the time the development is placed in service and DSHA has received cost certification on the development. A cost certification guide will be provided by DSHA for use by the developer in submitting all information. The cost certification for the development must include all sources and uses of funds including all syndication fees.

Based on the rankings, threshold eligibility review, and needs analysis, DSHA shall make reservation award recommendations to the Director of Delaware State Housing Authority. The Director shall review the rankings, eligibility and tiebreaker decisions. DSHA decisions are final.

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

Federal law requires developments receiving an allocation made prior to the year in which the building is placed in service to (1) have more than 10% of the reasonably anticipated costs of the development incurred by the end of the calendar year in which the allocation is made; and (2) be placed in service by the end of the second calendar year following the year of allocation. In certain circumstances, when a building receives an allocation in the second half of the calendar year, DSHA will follow IRS requirements, whereby 10% of expected basis has been expended within six months of receiving the allocation rather than at the end of the calendar year.

FORWARD RESERVATIONS

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

PLACED-IN-SERVICE DATE

All developments receiving a reservation of Credits must be either placed in service by November 1st of the year in which they receive Credits or have incurred more than 10% of eligible development costs by that date to be eligible for an allocation carryover of Credits pursuant to Section 42(h)(1)(E) of the Code. All owners who will not place the building in service by November 1, must submit a carryover application to DSHA by October 25th. Owners must provide a written certification to DSHA from a certified public accountant that the owner has incurred by the close of the calendar year of the allocation, expenditures for more than 10% of the reasonably expected basis of the development. Developments not adhering to this procedure or not meeting the above criteria will be subject to having their Credit reservation revoked.

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

At the time the Allocation Carryover Agreement is executed, the owner must elect whether the development will be recognized on a development basis or a building basis. 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.

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

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

DSHA reserves the right to require certain conditions to be met before making the final Credit allocation. These requirements will be itemized in the allocation carryover document. 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 document, the owner agrees to return in full the Credit allocation to DSHA.

DSHA is not making any representation or warranty that the amount of Credit allocated is sufficient to make a development feasible or viable.

COMPLIANCE MONITORING PROCEDURE

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

DSHA will perform annual on-site inspections of at least twenty percent (20%) of all LIHTC projects, including RHS Section 515 and tax-exempt bond financed properties. DSHA must inspect the low-income certification, the documentation the owner has received to support the certification, and the rent record for each low-income tenant in at least twenty percent (20%) of the low-income units in those projects for compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the "Code").

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

Minimum Low Income Set Aside

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

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

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

For properties that receive HOME funds, at least forty percent (40%) of the units in a building must be occupied by households at or below fifty percent (50%) of the median income limit.

Rent Limitations

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

Income Requirement

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

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

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

The form must be signed by the tenant and accepted by the owner. By signing this document, the tenant is certifying that the information is true and correct. DSHA reserves the right to request this information at any time throughout the compliance or extended use period, whichever is longer. Please see DSHA's Compliance Monitoring Manual for proper documentation and certification procedures.

Recordkeeping Requirements

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

- a) The total number of residential rental units in the building (including the number of bedrooms and the size, in square feet, of each residential rental unit);
- b) The percentage of residential rental units in the building that are low-income units;
- c) The rent charged on each residential rental unit in the building (including the source and amount of any utility allowance calculations);
- d) The low-income unit vacancies in the building(s) and information that shows when and to whom the next available unit(s) was rented;
- e) The number of occupants in each low-income unit;
- f) The annual income certification of each low-income tenant per unit;
- g) Documentation to support each low-income tenant's income certification;
- h) The eligible basis and qualified basis of the building(s) at the end of the first year of the Credit period, IRS Form #8609 and all attachments;
- i) A list of all tenants of the building(s) at initial rent-up which includes the following: name of occupant, number of persons, and annual income;
- j) The character and use of the non-residential portion(s) of the building included in the building's eligible basis under Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
- k) Documentation that the owner has not refused to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937;
- l) Documentation that the buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice to the annual certification submitted to DSHA. In addition, the owner must state whether the violation has been corrected;
- m) No findings of discrimination under the Fair Housing Act, 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 judgement from a federal court.

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

Annual Project Certification and Review

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

- a) The project met the required minimum set-aside or any higher set aside elected by the owner;
- b) There was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project or that there was a change, and a description of the change;
- c) The owner has received an annual income certification from each low-income tenant and documentation to support that certification;
- d) Each low-income unit in the project was rent-restricted under Section 42(g)(2);
- e) All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless, provided under Section 42(i)(3)(B)(iii));
- f) Each building in the project was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of violation for any building or low income unit in the project.
- g) There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or that there was a change, and the nature of the change (e.g. a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);
- h) All tenant facilities included in the eligible basis under Section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

- i) If a low-income unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;
- (j) If the income of tenants of a low-income unit in the project increases above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income.
- (k) If a household consists of ALL full-time students, such households met one of the exceptions outlined in Section 42 (i)(3)(D) which prohibits households occupied entirely by full-time students in a low-income tax credit unit;
- (l) The owner has not refused to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937;
- (m) No findings of discrimination under the Fair Housing Act, U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616(a)(1), or an adverse judgement from a federal court; and
- n) An Extended Low-Income Housing Commitment, as described in Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989) (e.g. Declaration of Land Use Restrictive Covenants relating to Low-Income Housing Tax Credits is in effect and was recorded with the Recorder of Deeds in the applicable county);

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

The Annual Project Certification form needs to be completed by the owner annually and forwarded to DSHA at 18 The Green, P.O. Box 1401, Dover, Delaware 19901 to the Attention of Cynthia L. Deakyne, by January 15 of each year.

DSHA shall review the Annual Project Certifications submitted as required above for compliance

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

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

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

Annual Site Inspection

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

Notice to Owner

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

Notice to Internal Revenue Service

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

Correction Period

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

Compliance Monitoring Fee

DSHA will charge a monitoring fee on Tax Credit eligible units for performing the service of monitoring the LIHTC project. For new projects, DSHA will charge \$500 per unit. This fee must be paid prior to receiving an allocation of Tax Credits; at the issuance of IRS form 8609 or the Carryover Agreement, whichever is issued first. For all projects allocated credits after January 1, 1990 through December 31, 1996, the annual fee will be \$15 per unit and will be due January 15 each year for the remaining years of the compliance period or for as long as DSHA has LIHTC monitoring responsibility for the project.

Compliance Monitoring Manual

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

PROGRAM APPROVAL

In accordance with Low Income Housing Tax Credit regulations, the allocation plan must be approved by the Governor of the State before Credits can be allocated. Governor Ruth Ann Minner approved the State of Delaware's Low Income Housing Tax Credit Program Allocation Plan on February 5, 2002.

Prior to the approval by the Governor, a notification of the public hearing on the Low Income Housing Tax Credit Program's Allocation Plan was published in The News Journal and the Delaware State News on December 3, 2001. Three public hearings were held on December 17th, 2001 in Sussex County Council Chambers, No. 2, The Circle, Georgetown from 9:00 to 11:00 a.m.; Kent County Administration Building, 414 Federal Street, Room 202, Dover from 1:00 to 3:00 pm.; and New Castle County, Cranston Heights Fire Hall on Kirkwood Highway, Wilmington from 6:30 to 9:30 p.m. Oral and written comments concerning the Qualified Allocation Plan were received and recorded at the hearings. Oral and written comments were accepted until December 28, 2001. A transcript of the hearings is available for review at DSHA's Wilmington Office.

DISCLAIMER

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

DSHA POLICY ON CIVIL RIGHTS COMPLIANCE

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

VOLUME CAP CREDITS

Tax-Exempt Bonds

Properties financed with tax-exempt bonds may receive 4% Tax Credits without participating in the annual competitive allocation process described in this Plan. Under IRS Code Section 42(m)(1)(D), such properties must receive a determination that they satisfy the requirements for the allocation under the Qualified Allocation Plan (QAP). However, complete applications must be submitted and approved before the tax exempt bonds are sold. DSHA's determination that a property satisfies the requirements of the Plan will be based on the property meeting all of the Threshold Requirements described in the QAP, including the geographic exemptions and exceptions. In addition, those sections of the application corresponding to the point categories for Increase in Compliance Period, Site and Neighborhood Standards, Project and Unit Amenities, and Public Housing and Section 8 waiting lists must be met. Finally, the applicant must meet the requirements of Preservation of At-Risk Housing or Preservation of Affordable Housing as those defined pursuant to the QAP; except that, for the purposes of the 4% Tax credits only, DSHA, upon a showing good cause by the applicant, may waive a minimal portion of the \$20,000 hard cost requirement for substantial rehabilitation. Such a waiver shall be in the sole discretion of DSHA and shall only be granted upon a showing that the proposed rehabilitation is sufficient in terms of quality and significance, notwithstanding the fact that it does not meet the \$20,000 requirement."

Tax-exempt bond-financed properties must make an application for Tax Credits prior to construction or rehabilitation of the property and will receive 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.

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 the applicant's proposed development is located, as well as the chief executive office of any local government having jurisdiction where applicant's proposed development is located.

A non-refundable application fee of \$750 must accompany all applications, including application for Volume Cap credits, at the time of submission. At reservation of the Credits, including Volume Cap Credits, an additional 1% of carryover/allocation amount over the ten-year credit period is due. Prior to the allocation of Credits, issuance of IRS Form 8609 or Carryover Agreement, whichever is issued first, a \$500 per unit compliance monitoring fee is due. All fees are non-refundable.

SEVERABILITY

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