

*STATE OF DELAWARE*  
*2005 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 (IRC). 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) of the IRC 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 that is appropriate to local conditions,
- ii) Which also gives preference in allocating housing credit dollar amounts among selected projects to:
  - a) Projects 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.

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 Low Income Housing Tax Credit (LIHTC) may be claimed annually for ten (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 ten-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:

Maximum Annual Credit  
Percentage Rate

New construction or substantial rehabilitation of existing housing-  
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.

70% present value

New construction or substantial rehabilitation of existing housing receiving a federal subsidy - 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 Community Development Block Grant (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.

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.

30% present value

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 may begin to claim the Credit in either the year the development is placed in service or the following year. A building is considered to be Placed In Service (PIS) when the first unit in the building 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, the "accelerated" Credit amount, plus interest, may be subject to recapture by the IRS. The federal government considers the Credit a 15-year benefit accelerated to ten (10) years. Therefore, the accelerated Credit amount is the difference between the aggregate amount of Credit claimed and the aggregate amount of Credit that would have been available if the Credit was spread over the entire 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 and evolving. For example, changes in the program adopted by Congress in 1989, 1990, 1993 and 2000 require careful review by persons who have extensive experience and expertise with this program and its requirements. The explanation contained in this QAP is qualified in its entirety, as it is only a summary of the LIHTC program and should not in any way be relied upon as legal advice. To that end, it is strongly recommended that project sponsors interested in applying for a Tax Credit allocation contact their tax accountant and attorney to review this program, the Internal Revenue Code (IRC) and IRS Regulations, IRS rulings, IRS guidance and any other pertinent information before pursuing the program.

As rules and regulations continue to be issued by the U.S. Department of Treasury for all facets of the Low Income Housing Tax Credit Program, Tax Credit reservations and allocations will be made by DSHA 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. Regulations, rulings, Revenue Procedures and Technical Advice Memoranda (TAMs) are regularly issued by the IRS. It is the sponsor's obligation to understand and comply with the rules.

## **DESCRIPTION OF HOUSING NEEDS AND PRIORITIES - 2003**

In February 2003, Mullin & Lonergan Associates, Inc. out of Pittsburgh, Pennsylvania completed a five-year statewide housing needs assessment for DSHA. As a result, DSHA will be able to better direct its resources towards meeting those identified needs. The following is an overview of the needs as they relate to renter households.

### ***Existing Households***

In summary, the greatest need for affordable housing still remains in the existing housing stock. The need exists in three areas: substandard housing; “At-Risk” households living in precarious circumstances; and, potential affordable housing units lost to conversion.

1. At least 13,183 units, or 3.8 percent of the State’s total housing inventory, are in need of substantial rehabilitation. Of this number, 5,693 are rental units or 6.8 percent of the State’s total rental inventory. 2,564 of these units are assisted units located in rental communities, and the remaining 3,129 are market/non-subsidized units located in rental communities, single-family units or manufactured homes.
2. 18,150 renter households earn less than \$20,000 annual income and pay more than 30 percent of their income toward housing expenses. These precarious socioeconomic conditions place households “At-Risk” one paycheck away from homelessness. These households need either one-time rental assistance or assistance through a rent subsidy to make that existing unit more affordable. A small percentage of the “At-Risk” population can be assisted through new construction – which will be explained in more detail in the next section.
3. There are 1,963 assisted rental units that could be lost due to conversion to market rate housing by 2007 as a result of expiration of affordability restrictions, non-renewal of a Section 8 subsidy, or an owner’s election to prepay a mortgage. Of the potential 1,963 units, 419 units are family units developed with Federal low income housing tax credits, 1,237 units are family Section 8 project-based, and 307 units are elderly Section 8 project-based. It is estimated, however, that of the total 1,963 units eligible to convert, slightly less than ten percent, or 187 units, eligible to convert actually will convert.

The following table presents the needs of existing households for the next five years by geographic area.

## Preservation/Rehabilitation Demand 2003-2007

	Potential Units Lost to Conversion	Market/Non- subsidized Units In Need of Rehabilitation	Assisted Units in Need of Rehabilitation	Total
New Castle County	100	1,812	190	2,102
City of Wilmington	87	916	470	1,473
City of Newark	0	86	120	206
Kent County	0	579	88	667
City of Dover	0	46	0	46
Sussex County	0	1,019	294	1,313
Town of Georgetown	0	58	15	73
Total	187	3,129	2,564	5,880

Source: Mullin & Lonergan Associates, Inc. (M&L)

Note: The number of market/non-subsidized is impacted by the number of assisted units in need of rehab. The assisted total was derived by multiplying assisted units > 20 years old by 50 percent. The market total was derived by deducting the assisted number from the M&L total rental estimated substandard housing units.

### ***New Construction***

The other rental housing need is for additional rental units either to accommodate new household growth or to relieve the conditions of “At-Risk” renter households who are cost-burdened and residing in overcrowded and/or substandard units. Over the next five years, 2,985 units are needed either through new construction or the substantial rehabilitation of vacant dilapidated buildings: an average of approximately 600 units a year. Some important findings regarding the need for new rental units, and the table presenting the needs in detail, are as follows:

- a. Most of this need, 1,835 units, is for extremely low-income households, for whom it is impossible to assist without a subsidy.
- b. Approximately 450 units are for the elderly age 55 and over, of which 205 are for the extremely low-income households.
- c. 1,290 units are projected based upon existing households considered to be “At-Risk” and currently residing in an overcrowded or substandard unit.
- d. When looking at all income ranges for new demand, the greatest need is in New Castle County with 1,392 units, followed by Sussex County at 892 units, and Kent County with 721.
- e. When looking at the income ranges that are most likely to be served with the LIHTC program, 31-50 percent and 51-60 percent of area median income, the demand is much lower with only 885 units of rental housing needed. From this perspective, the need is greatest in Kent County and Sussex County with 360 and 325 units, respectively.

**Rental Housing Demand Based on New Growth (2003 to 2007) and Existing “At Risk” Households**

	Extremely Low (0-30%)			Very Low (31-50%)			LIHTC (51-60%)			Other Low (61-80%)			Total
	General Age 15-54	Elderly Age 55 and over	Existing “At- Risk”	General Age 15-54	Elderly Age 55 and over	Existing ”At- Risk”	General Age 15-54	Elderly Age 55 and over	Existing “At- Risk”	General Age 15-54	Elderly Age 55 and over	Existing “At- Risk”	
New Castle County	0	0	441	135	0	N/A	0	0	N/A	0	0	N/A	576
City of Wilmington	0	0	335	0	0	N/A	0	0	N/A	0	10	N/A	345
City of Newark	60	70	86	0	30	N/A	75	20	N/A	130	0	N/A	471
Kent County	200	50	93	95	0	N/A	100	10	N/A	0	0	N/A	548
City of Dover	25	0	53	85	0	N/A	0	10	N/A	0	0	N/A	173
Sussex County	45	70	233	70	110	N/A	55	20	N/A	100	0	N/A	703
Town of Georgetown	10	15	49	20	30	N/A	15	5	N/A	25	0	N/A	169
Subtotal	340	205	1,290	405	170	N/A	245	65	N/A	255	10	N/A	
Total	1,835			575			310			265			2,985

Source: Mullin & Lonergan Associates, Inc.

Note: Existing “At-Risk” takes the average percentage of overcrowded and substandard renter housing units multiplied by the number of “At-Risk” households to arrive at “At-Risk” demand.

## Special Populations

Housing for special populations was another need identified in this study. This includes emergency housing, supportive housing, group homes, and other housing opportunities for special need populations. The findings are as follows:

1. **Veterans** – There is an estimated need for housing for 127 emergency beds, transitional housing beds, and supportive housing units.
2. **Persons with HIV/AIDS** – There is an estimated need for 200 housing units.
3. **Persons with Mental Illness and Developmental Disabilities** – The unmet housing need is approximately 288 individuals and 45 persons in families.
4. **Persons with Drug and Alcohol Addictions** – There is an estimated need for 186 beds for chronic substance abusers and a need for 46 beds for chronic substance abuser in families.
5. **Youth** – 55 youth in foster care turn 18 each year, of which DCYF provides independent living arrangements for 18 youth.
6. **Prisoners** – The Re-entry Program Grant is targeting extended serves for up to 300 offenders in Delaware between 18 and 35 years old, per year to prepare for return to society and provide services after release from prison.
7. **Victims of Domestic Violence** – While indications are that there is a need for housing assistance, this need has not been quantified.
8. **Migrant and Seasonal Farm Workers** – While indications are that there is a need for housing assistance, this need has not been quantified.

## **SUMMARY**

### **Statewide**

1. Special Populations – 1,247 units of special population housing

### **Wilmington**

2. Preservation Affordable – 87 units
3. Preservation Structural – 1,386 units (805 in assisted rental communities)
4. New Construction
  - a. Extremely Low (0-30%) – 335 family units

### **New Castle County**

5. Preservation Affordable – 100 units
6. Preservation Structural – 2,208 units (838 in assisted rental communities)
7. New Construction -
  - a. Extremely Low (0-30%) – 587 family units, 70 elderly units
  - b. Very Low (31-50%) – 135 family units, 30 elderly units
  - c. LIHTC Low (51-60%) – 75 family units, 20 elderly units

### **Kent**

8. Preservation Structural – 713 units (331 in assisted rental communities)
9. New Construction -
  - a. Extremely Low (0-30%) – 371 family units, 50 elderly units
  - b. Very Low (31-50%) – 180 family units
  - c. LIHTC Low (51-60%) – 100 family units, 20 elderly units

### **Sussex**

10. Preservation Structural – 1,386 units (590 in assisted rental communities)
11. New Construction -
  - a. Extremely Low (0-30%) – 337 family units, 85 elderly units
  - b. Very Low (31-50%) – 90 family units, 140 elderly units
  - c. LIHTC Low (51-60%) – 70 family units, 25 elderly units

## SUMMARY OF RENTAL NEEDS

	Preservation of Existing Housing Stock				New Construction								
	Afford-ability	Structural		<b>Total</b>	Extremely Low (0-30)		Very Low (31-50)		LIHTC (51-60)		Other (61-80)		<b>Total</b>
		<i>market</i>	<i>assist</i>		<i>15-54</i>	<i>55+</i>	<i>15-54</i>	<i>55+</i>	<i>15-54</i>	<i>55+</i>	<i>15-54</i>	<i>55+</i>	
<b><i>Wilmington</i></b>	87	581	805	1,473	335	0	0	0	0	0	0	10	345
<b><i>New Castle</i></b>	100	1,370	838	2,308	587	70	135	30	75	20	130	0	1,047
<b><i>Kent</i></b>	0	382	331	713	371	50	180	0	100	20	0	0	721
<b><i>Sussex</i></b>	0	796	590	1,386	337	85	90	140	70	25	125	0	872
<b>STATE</b>	<b>187</b>	<b>3,129</b>	<b>2,564</b>	<b>5,880</b>	<b>1,630</b>	<b>205</b>	<b>405</b>	<b>170</b>	<b>245</b>	<b>65</b>	<b>255</b>	<b>10</b>	<b>2,985</b>

**NOTE:** The needs presented under the Preservation-Affordability and Preservation-Structural-Assist categories correlate with this *Qualified Allocation Plan's* Preservation Expiration activity. The needs presented under the Preservation-Structural-Market category correlates with Conversion activity.

## TAX CREDIT RESERVATIONS AND POOLS

### **Geographic Reservations**

~~To ensure geographic distribution of Low Income Housing Tax Credits across the State, and by and among localities, DSHA has set up Pools for allocating tax credits.~~

~~Developments will compete only within their respective Pools. Developments will be ranked within these Pools and the highest scoring developments in each Pool will be separately evaluated to determine the amount of tax credits required. 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 of the IRC, 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 dollar amounts for 2005 are based on the annual tax credit authority available. 2005 forward reservations and commitments reduce Delaware's net available Tax Credit amount to \$1,447,874. **\$1,289,913**

<b>1. <u>Non-Profit Pool</u></b>	<b><u>Approximate Tax Credit Authority</u></b>
All Eligible Non-Profit Organizations	\$302,928.00
<del><b>2. <u>New Castle County Pool</u></b></del>	<del><b><u>Approximate Tax Credit Authority</u></b></del>
<del>— Including the City of Wilmington</del>	<del>\$874,612.00</del>
<del><b>3. <u>Kent &amp; Sussex County Pool</u><sup>1</sup></b></del>	<del><b><u>Approximate Tax Credit Authority</u></b></del>
<del>— Kent County and Sussex County</del>	<del>\$769,612.00</del>
<del>— <b>Excluding: Smyrna and Dover</b></del>	
<del><b>3a. <u>Rural Development Set-aside</u></b></del>	<del><b><u>Approximate Tax Credit Authority</u></b></del>
	<del>\$105,000</del>

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1 Special Needs Housing, RHS 515 Housing, and Preservation Expiration (see definitions) are exempted from this exclusion.

~~In order to address the housing needs of Delaware's rural communities, \$105,000 of the credit available in the Kent & Sussex County Pool 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 the Kent & Sussex County Pool.~~

~~4. Preservation Expiration Pool ————— Approximate Tax Credit Authority~~

~~————— \$300,000~~

~~A. Tax Credits: Any Pre-1990 tax credit housing development, which has completed its compliance period that is in need of substantial rehabilitation and at risk of losing its affordability.~~

~~B. Subsidized: Any currently occupied subsidized housing development (see definition on page 25 of subsidized housing) in need of substantial rehabilitation and at risk of losing its affordability.~~

~~In order to be eligible under the Subsidized portion of this pool, applicants must: 1) demonstrate that an application for any applicable capital assistance from the subsidy source (other available assistance in the form of financing for eligible development costs other than rental assistance/subsidy payments) has been made, and 2) commit to making an application for continued project-based housing assistance payments and/or rental assistance payments for the longest possible period and to continue to re-apply for extensions. The obligation to apply for assistance payments will be a condition of any Tax Credit Reservation Letter and a response to the application for assistance payments must be received prior to construction closing.~~

~~For each of the above definitions, the applicant must submit written confirmation from the contract administrator of imminent expiration of affordability controls within two (2) years.—~~

~~**Note: Conversion Housing will not be considered in the Preservation Pool.**~~

~~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 IRC. 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.

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, this shall include any co-developers or joint ventures where the development entity receives part of the developer's fee. 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 will be provided to the highest-ranking project that requires the least amount of credits.

## **DEFINITIONS**

### **Affordable**

A unit is considered affordable if the cost of housing (rent plus utilities) is income and rent restricted not to exceed 30% of the household 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.

### **Conversion**

Any non-subsidized, non-tax credit housing development in need of substantial rehabilitation that may be converted into newly restricted and assisted affordable housing rental units.

### **Developer**

A Developer is any corporate entity, partner or individual responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished.

## Developer Fee

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. (See HDF Supplement if applying for HDF or HOME funds). For identity of interest (related party) acquisitions of existing rental properties, the fee for acquisition is calculated at 2½ % of the acquisition cost less land value (see DSHA for calculation). In addition, credits will not be allocated on: 1) developer's fees exceeding the above developer fee limits; or 2) any developer fee paid on costs exceeding the Eligible Basis Limits.

## 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).

## 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>
<del>\$98,153</del>	<del>\$112,512</del>	<del>\$136,816</del>	<del>\$176,992</del>	<del>\$194,282</del>
\$107,802	\$123,574	\$150,266	\$194,392	\$213,384

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.

**Families In Poverty**

According to the United States Department of Health and Human Services, a family in Delaware is considered to be in poverty if the household income is at or below the following income levels:

1 person household	\$9,310
2 person household	\$12,490
3 person household	\$15,670
4 person household	\$18,850
For each additional person, add	\$3,180

**Interim Income**

All project operational income received prior to permanent closing, including Federal housing assistance payments, less routine operating expenses (which includes any debt service normally paid during the construction period).

**Low-Income Unit**

As defined by IRC Section 42(I)(3), a family is considered low income if its income is less than 60% or 50% of area median income, adjusted for family size, depending upon whether the applicant elects to satisfy the “20-50 test” or the “40-60 test” under IRC Section 42(g)(1).

**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 not tax credit rent-restricted and not subject to income limits.

**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 Expiration**

- A. Tax Credits: Any Pre-1990 tax credit housing development, which has completed its compliance period that is in need of substantial rehabilitation and at risk of losing its affordability.
- B. Subsidized: Any currently occupied subsidized housing development (see definition on page 25 of subsidized) in need of substantial rehabilitation and at risk of losing its affordability.

For each of the above definitions, the applicant must submit written confirmation from the Tax Credit agency or subsidy contract administrator that the development's affordability expiration is imminent (within two years).

**Qualified Census Tract**

Defined in Section 42(d)(5)(C) of the Code means a census tract designated by the Secretary of Housing and Urban Development (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 with 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) of the IRC 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 to be affiliated with or controlled by a for-profit organization; and
- iii. One of the exempt purposes of such organization includes the fostering of low-income housing.

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. **An unqualified** legal opinion must be submitted with the application that states the joint venture meets the requirements of Section 42 of the IRC 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.

### **Related Party**

An affiliate and/or Related Party is any person or entity that: (i) has a spousal or family relationship, parent-subsidary relationship, or where owners, officers, directors, partners, stockholders or members of one business entity has a five percent (5%) or more interest in the other business entity; or (ii) where a substantial relationship exists between the parties directly or indirectly through (a) common family, (b) common general partners or members, (c) common control of the entities, or (d) the person or entity is otherwise controlled in whole, or in part, by the other person or entity. A tax attorney's opinion must be submitted at application in order for the related party to qualify for acquisition credits in accordance with Section 42. The opinion must state that the owner is entitled to claim acquisition credits under Section 42 in accordance with IRC related party requirements.

**Note: See DSHA for Related Party Developer Fee Calculation.**

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, psychosocial 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; and
- Migrant and Seasonal Farm workers.

Verification of special needs is required at the time of the resident's application.

Other special needs populations identified in DSHA's needs assessment may be considered at DSHA's sole discretion.

**Social Services:**

A development that 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; and
- Substance Abuse Counseling or Referral.

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

**Substantial Rehabilitation**

A Rehabilitation 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 both of 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 has United States Housing & Urban Development (HUD), USDA Rural Housing Service (RD) and/or equivalent project-based rental assistance contracts. A copy of any pertinent contract for subsidy must be submitted with the application.

## 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 <sup>2</sup>

- 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 choice between complying with the 20-50 test or the 40-60 test, as well as the determination as to the number of housing units that will be set aside for low-income households in total, must be made at time of application for Credit and maintained for the entire compliance period. Once made, both decisions are 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
  - 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.

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<sup>2</sup> If HOME funds are lent at a below market interest rate 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.

## DSHA Threshold Requirements

**Note: For Developments that have previously received tax credits, the compliance period must have expired on all buildings before re-applying for tax credits.**

- 1) **Livable Delaware**-All applications for new construction 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. In keeping with Livable Delaware Strategies, tax credit developments should integrate into existing residential communities and neighborhoods. Surrounding uses must be compatible with the proposed development and the proposed design compatible with existing architecture in the area. Livable Delaware Strategies and Maps can be accessed on the web at: <http://state.de.us/planning/shape/strategy/index.htm>
- 2) **Compliance with Discrimination Laws**-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) **Minimum Family Size**-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.<sup>3</sup>
- 4) **Minimum Gross Square Footage** –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:

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<sup>3</sup> 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.

one bedroom- 700 sq. ft; two bedrooms- 850 sq. ft.; three bedroom -1050 square feet, efficiencies -500 sq. ft. and SROs- 100 sq. ft<sup>4Square</sup> footage of units may not be averaged to meet minimum square footage requirements

5) **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 market study provider.

4) **Local and Community Notice For Acquisition/Rehabilitation Developments** -

Applicants must notify, via certified mail, the ~~county local~~ executive **or if in a municipality, the local mayor/president that an application has been submitted.** ~~council or manager having jurisdiction over the location of the proposed development, after submitting the application.~~ Applicant must also notify, via certified mail, all neighborhood associations, civic groups and community organizations within one-quarter mile of the proposed development after 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 application. Applicants/sponsors must **certify** to compliance with this section, as well as document proof of compliance in the form of U.S. Postal certified mailing receipts and stamped green cards submitted to DSHA **by 4:00 pm on August 15 April 25, 2005** (approximately ten (10) days after application). **Failure to submit the above-referenced certification, stamped receipts and green cards** ~~and green cards~~ to DSHA by the deadline will result in the disqualification of the sponsor's application. 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

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<sup>4</sup> 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.

local government and community notices requirements.

NOTE 1: NOTIFICATION IS A THRESHOLD ISSUE AND THE MEASURE OF COMPLIANCE THEREOF WILL BE BASED SOLELY ON WHETHER THE SPONSOR/DEVELOPER COMPLIED WITH THE TECHNICAL REQUIREMENTS OF NOTICE. THE PURPOSE OF THE REQUIREMENT IS TO KEEP THE COMMUNITY INFORMED AND TO FACILITATE INPUT FROM THE COMMUNITY TO THE DEVELOPER IN TERMS OF THE CONSTRUCTION PLANS FOR THE DEVELOPMENT (PLAYGROUNDS, FENCES, PARKING LOTS, LIGHTING, ETC.).

NOTE 2: ALL NEW CONSTRUCTION DEVELOPMENTS ARE EXEMPT FROM THIS THRESHOLD REQUIREMENT BECAUSE NOTICES ARE GIVEN THROUGH THE ZONING AND BUILDING PERMIT PROCESS OF THE LOCAL JURISDICTION.

- 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 subsection [c] 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. All pertinent terms and conditions of the sale or lease must be disclosed at the time of application.

- 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 one 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. **For acquisition rehabilitation developments, DSHA construction staff must be notified forty-five (45) days in advance of application submission for a pre-inspection.**

**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-** IRS 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.
- 13) **Rehabilitation** - Any development allocated rehabilitation credits must vacate units in order to complete renovation activities and also provide relocation assistance to tenants in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).

## RANKING AND POINTS

### ~~POINT SYSTEM FOR NEW CASTLE COUNTY POOL~~

#### **Increase in the Compliance Period**

For increases in the compliance period, zero to three (0-3) points shall be awarded. 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.

1 point:	20 year compliance + 10 year extended use
2 points:	25 year compliance + 5 year extended use
3 points:	30 year compliance + 0 year extended use

or

Three (3) 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. In such instances, the extended use period will be waived. The deed of easement and Declaration of Restrictive Covenants shall reflect a right of first refusal be granted by the owner to the residents. Units must be offered at the units' fair market value at the time of the original resident's initial occupancy of the unit. Total costs per unit is subject to the limits of Section 221 (d)(3)(ii) of Section 42. Applicants must submit a detailed marketing plan which includes projections on maintenance, tenant reserve funds, homeownership training, continued affordability, sales price calculation, lease/purchase agreements, etc. The plan will be evaluated for feasibility and compliance with all regulations (Section 42, Fair Housing, and all other funding sources requirements). Syndication documents must reflect the conversion.

#### **Developments Serving the Lowest Income Tenants**

Two to fifteen (2-15) 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%	10
81% - 100%	15

**Additional New Units for Families in Poverty**

One to five (1-5) points will be awarded to developments whose percentage of tax credit units are affordable and available to individuals and families meeting the Families in Poverty definition on page 21.

- 30% 5 points
- 20% 3 points
- 10% 1 point

Accordingly, rents should be calculated at 30% of Area Median Income (AMI).

Note: Current subsidized and Tax Credit properties are excluded from this definition and will not receive points in this category.

**Per Unit Cost Reduction**

One to five points (1-5) points will be awarded to Developers, whose per unit costs are fifty percent (50%) to eighty percent (80%) of the current HUD 221 (d) (3) limits. The table below defines the number of points earned based on Total Development Cost (TDC) range by bedroom size. Per unit costs are determined by dividing the total fee cost (LIHTC App. Part II, Economics, section F, line item a) by the number of units (adjusted for bedroom size).

**Note: In the event the final TDC exceeds the initial TDC indicated on the application, DSHA reserves the right to withdraw the allocation of credits.**

BEDROOM SIZE	P O I N T S E A R N E D		0		1		3		5				
	HUD 221(d)(3) Limits	TDC: 81-100% of HUD 221(d)(3) Limits			TDC: 71-80% of HUD 221(d)(3) Limits			TDC: 61-70% of HUD 221 (d)(3) Limits			TDC: 50-60% of HUD 221 (d)(3) Limits		
0	\$98,153	\$78,523	-	\$98,153	\$68,708	-	\$78,522	\$58,893	-	\$68,707	\$49,077	-	\$58,892
1	\$112,512	\$90,011	-	\$112,512	\$78,759	-	\$90,010	\$67,508	-	\$78,758	\$56,256	-	\$67,507
2	\$136,816	\$109,454	-	\$136,816	\$95,772	-	\$109,453	\$82,091	-	\$95,771	\$68,408	-	\$82,090
3	\$176,992	\$141,595	-	\$176,992	\$123,895	-	\$141,594	\$106,196	-	\$123,894	\$88,496	-	\$106,195
4	\$194,282	\$155,427	-	\$194,282	\$135,998	-	\$155,426	\$116,570	-	\$135,997	\$97,141	-	\$116,569

2005 PER UNIT COST LIMITATIONS TABLE

BEDROOM SIZE	POINTS EARNED	HUD 221(d)(3) Limits	0		1		3		5				
			TDC 81-100%		TDC:71-80% of Limits		TDC:61-70% of Limits		TDC: 50-60% of Limits				
0	\$107,802	86,243	-	\$107,802	\$75,462	-	\$86,242	\$64,682	-	\$75,461	\$53,901	-	\$64,681
1	\$123,574	98,860	-	\$123,574	\$86,503	-	\$98,859	\$74,145	-	\$86,502	\$61,787	-	\$74,144
2	\$150,266	120,214	-	\$150,266	\$105,187	-	\$120,213	\$90,161	-	\$105,186	\$75,133	-	\$90,160
3	\$194,392	155,515	-	\$194,392	\$136,075	-	\$155,514	\$116,636	-	\$136,074	\$97,196	-	\$116,635
4	\$213,384	170,708	-	\$213,384	\$149,370	-	\$170,707	\$128,031	-	\$149,369	\$106,692	-	\$128,030

TDC: Total Developments Costs are determined by dividing Total Developments costs as listed in LIHTC APP Part II, Development Economics ( Line F a) divided by number of units. Adjustments for bedroom size will be made accordingly.

### 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 persons
- Mentally ill persons
- Persons with physical disabilities
- Mentally retarded/developmentally-disabled persons
- Migrant and Seasonal Farm workers

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

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 these services and how they will be paid for must be provided.

### Local Government Contribution

Two to five (2-5) 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 by at least 2%. 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, 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.

2%-2 points

3%-3 points

4%-4 points

5%-5 points

### **Local Government Support**

Three (3) 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 be from the Chief Executive Officer of the municipality, county or local government in which the development is located and 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, seven to fifteen (7-15) points will be awarded for the greater leveraging of funds based on the unadjusted qualified basis calculations. Provision of local government five-year rental subsidies and reduced developer's fees are sources of leveraging for this category. For tax credit equity raised beyond the minimum required, leveraging points are only awarded for additional net equity raised if a detailed letter of intent from an investor or syndicate for the additional net equity is submitted at time of application. A letter of interest is NOT sufficient.

#### **Percentage of Leveraging:**

**One hundred percent (100%)** of the development's permanent funding, excluding tax credit equity, comes from other than DSHA sources. 15 points

**More than seventy-five percent (75%)** of the development's permanent funding excluding tax credit equity, comes from other than DSHA sources. 10 points

**From fifty percent to seventy-five percent (50%-75%)** of the development's permanent funding, excluding tax credit equity, comes from other than DSHA sources. 7 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 net equity factor used above, this additional equity will be considered a non-DSHA resource. Reserves are NOT a source of leveraging.

**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 not rent-restricted and not income-restricted

**Conversion Housing**

Five (5) points will be awarded for Conversion 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.

**Capacity of Development Team**

Zero to six (0-6) 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 team 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 three (3) 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	3 points

b) Management Agent’s Experience: Up to three points (3) shall be awarded based on the number of

completed and occupied Low Income Housing Tax Credit and subsidized developments currently being managed.

1- 4 developments	1 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.

### **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; and  
Financial literacy and counseling

### **Site and Neighborhood Standards**

A. 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.

B. One (1) point will be awarded for each of the following factors up to a maximum of ten (10) points. Each factor listed below must be supported and documented in the market study.

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)

Target Area –Kent and Sussex Counties:

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)

Five (5) points will be awarded in Kent & Sussex Counties to newly constructed developments that create new non-age restricted family units.

### **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 (5) points.

These include but are not limited to:

- On site community center;
- Maintenance Building;
- 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);
- Eat-in kitchens;
- Exterior storage closets; and
- Multiple facades
- Internet access (within each residential unit)

Applicants are invited to propose amenities in addition to those listed and may, in DSHA's discretion, receive points for them.

### **Community Revitalization Plan**

Two (2) points will be awarded if the development is clearly identified and is included in an approved Community Revitalization Plan. A certification from the municipality that the development is in the most recently approved Community Revitalization Plan must be submitted, citing page and number, which said page and number must be attached to the certification. See the form of certification included in the Attachments. Letters of support and/or resolutions will NOT be considered under this category.

### **Qualified Census Tract**

Three (3) points will be awarded to developments that are located within a HUD identified Qualified Census Tract.

### **Developer's Previous Performance**

Up to four (4) points will be awarded to Developers, Co-Developers, or Joint-Venture Developers who have demonstrated timely development of tax credit properties and bringing properties to permanent closing at or under budget. All of the Developer's Delaware tax credit properties developed and completed in the last five 2005 LIHTC QAP Round 2

(5) years will be considered in this category. (In addition, a Developer must have completed at least two properties in the last five years to be considered for an award of points). A minimum of seventy-five (75%) percent of those properties completed in the last five (5) years must have met one of the following to be awarded points in these categories. (see LIHTC-Application Attachments – Developer’s Previous Performance within Delaware – this form must be used). For Developers, Co developers or Joint-Venture Developers who did not develop and complete Delaware LIHTC properties in the last five (5) years, but did so in other states they may also be considered in this category by submitting the attachment: Developers Previous Performances outside Delaware. (see LIHTC-Application Attachment – Developer’s Previous Performance outside Delaware – this form must be used).

Two (2) points will be awarded to Developers whose properties have completed their construction closing within six months after their credit allocation (carry-over allocation) was made at year-end and completed the construction and placed all residential units in service within the construction loan term (without extensions).

Two (2) points will be awarded to Developers whose properties have been completed and brought in at or under the total development costs approved in the final proforma at construction closing. (No reductions of developer fees, profit and overhead or use of operations or reserve funds to offset construction cost or soft cost overruns will be considered).

### **Community Outreach**

Up to five (5) points will be awarded to developments in which the sponsor is actively involved in Community Outreach PRIOR to submitting its application, but in no event, later than ~~March 15,~~ **July 5, 2005**.

Sponsor notifies community organizations, ~~as well as the county executive and or local mayor/president with the appropriate elected officials~~ within ¼ mile ~~of the site with a copy to the appropriate elected officials~~, by certified letter prior to application: 2 points

Sponsor holds community meetings/presentations prior to application: 3 points

(Copy of sign-in sheets, notices and correspondence must be submitted with application in order to receive points.)

**~~POINT SYSTEM FOR KENT AND SUSSEX COUNTY POOL~~**

All points are the same as above with the following exceptions:

**~~New Construction of Non-Age Restricted Family Units~~**

Five (5) points will be awarded in Kent & Sussex Counties to newly constructed developments that create new non-age restricted family units.

**~~Site and Neighborhood Standards for Kent and Sussex Counties~~**

Each factor listed below must be supported and documented in the market study.

One (1) point will be awarded for each of the following factors for a maximum of ten (10) 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 above with the following exception:

**~~New Construction of Non-Age Restricted Family Units~~**

Five (5) points will be awarded in Kent & Sussex Counties to newly constructed developments that create new non-age restricted family units.

**~~Site and Neighborhood Standards~~**

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

**POINT SYSTEM FOR PRESERVATION EXPIRATION POOL:**

~~All points are the same as above with the following exceptions:~~

**~~Site and Neighborhood Standards~~**

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

**~~Conversion Housing~~**

~~No points will be awarded in this pool for conversion housing.~~

**POINT SYSTEM FOR ALL SPONSORS: AN APPLICATION MUST SCORE A MINIMUM OF FIFTY-FIVE (55) POINTS FOR AN AWARD OF CREDITS.**

## **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, 18 The Green, Dover, Delaware 19901, **no later than 3:00 p.m. on April 15, August 5, 2005**. Late submissions will not be accepted. Two complete applications must be submitted, and one additional application 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 are 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

## **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 within 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. Prior to making allocations in accordance with rankings pursuant to the QAP for the current year, DSHA shall allocate Credits to developments which (i) received Forward Reservations of Credits in previous years and (ii) in the determination of DSHA, have met any conditions to such Forward Reservations and are ready to receive an allocation of Credits.

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 by the owner (mortgagor) and the general contractor of 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 conditions 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 later of (i) the end of the calendar year in which the allocation is made or (ii) six months from the date of the allocation; and (2) be placed in service by the end of the second calendar year following the year of allocation.

If a building receives an allocation in the second half of the calendar year, DSHA will follow IRS requirements, to satisfy the 10% expenditure requirement.

## **FORWARD RESERVATIONS**

DSHA reserves the right, at its sole discretion, to reserve a portion of its Credits for a year subsequent to the current year to a highly ranked development that received only partial funding in the current year 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. DSHA's Housing Director reserves the right to amend the Forward Reservations requirements at their sole discretion.

## **PLACED-IN-SERVICE DATE**

All developments receiving a reservation of Credits must be placed in service either 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. 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 pursuant to Section 42(b)(2)(A)(ii)(I) of the Code, to fix the applicable Credit percentage for each building in the development as the percentage prescribed by the Secretary of the Treasury for the month of the Carryover Agreement. 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.

### **Non-Compliance with Placed-In-Service Date-Forward Reservations**

1. DSHA, within its sole discretion, reserves the right, based upon written documentation submitted by the sponsor, to make a determination that the failure to place a development in service is due to circumstances beyond the sponsor's control.
2. Such written documentation must:
  - a) Be submitted in writing within thirty (30) days of such sponsor's knowledge of the delay, via certified mail to: DSHA, 18 The Green, Dover, DE 19901; and
  - b) State the name of the development, the name of the sponsor, and the deadline pursuant to the Code for placing the development in service; and
  - c) Provide an explanation, supported by appropriate evidence, of (i) the due diligence performed by the sponsor in attempting to meet the deadline, (ii) the specific circumstances causing the delay, (iii) the attempted remedial measures taken by the sponsor in order to mitigate the delay, and (iv) any other pertinent information.

3. Notwithstanding any other restrictions in the “Forward Reservations” section, or other sections of the QAP, upon such determination by DSHA that the circumstances, are in fact, beyond the sponsor’s control, DSHA may allow the development, having previously been evaluated, reserved and/or allocated credits (but being unable to be placed in service within the applicable time limit), to return such credits without penalty imposed by DSHA and to be given a forward reservation in the allocation of the same amount of credits (as those returned to DSHA) within the next two calendar years after the return of the credits.
4. Any such priority will be conditioned upon:
  - a) A determination by DSHA that the development continues to be desirable in terms of meeting affordable housing needs;
  - b) The sponsor’s early return of any previously allocated credits; and
  - c) Such other terms as are deemed appropriate under the circumstances by DSHA in its sole discretion.
5. Anything in the preceding section on Forward Reservations to the contrary notwithstanding, DSHA shall be authorized to make forward reservations of tax credit authority in order to encourage the sponsors of any such developments to return the credits within the year that it is determined that the sponsor will not be able to place the development in service, while awaiting the allocation from the next year.
6. The return of credits pursuant to this subsection will only be allowed one time and the development and sponsor must comply with the current Qualified Allocation Plan (QAP) in place at the time of re-application.

**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 it 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 Reservation Letter. 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 Agreement, the owner agrees DSHA shall have the right to cancel the Credit allocation and the owner shall acknowledge the 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 or that the development has complied or will comply with any particular requirement of the IRC.

## 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 developments, including RHS Section 515 and tax-exempt bond financed properties.

DSHA will conduct on-site inspections of all the buildings in the development by the end of the second calendar year following the year the last building in the development is placed in service and, for at least 20% of the development's low-income housing units, inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for the tenants in those units.

In addition, at least once every three years, DSHA will conduct on-site inspections of all the buildings in each low-income housing developments and, for at least 20% of the development's low-income units, inspect the units, the low-income certifications, the documentation the owner has received to support the certifications, and the rent record for the tenants in those units. DSHA will determine which low-income housing developments will be reviewed in a particular year and which tenants' records are to be inspected.

DSHA will request an owner of a low-income housing development not selected for the review procedure in a particular year to submit to DSHA for compliance review and annual compliance report, which will include but is not limited to, copies of the annual income certifications, the documentation such owner has received to support those certifications and the rent record for each low-income tenant of the low-income units in their development.

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

DSHA has the right to perform an on-site inspection of any low-income housing development through the end of the compliance period of the development. Each owner of a development receiving credits must permit the performance of DSHA inspections. The owner of a low-income housing development should notify DSHA when the development is placed in service. DSHA reserves the right to inspect the property prior to issuing IRS Form 8609 to verify that the development conforms to the representations made in the Application.

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.

### Record keeping 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 judgment 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 judgment 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. An annual fee of \$15 per unit fee will also be due as long as DSHA has LIHTC monitoring responsibility (after the initial compliance period has expired) for all properties under the LIHTC program.

#### Compliance Monitoring Manual

DSHA has developed a "Compliance Monitoring Manual" to be used as a guide and reference for LIHTC Compliance Monitoring Procedures. Upon 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 18, 2005. .

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 beginning on January 6, 2005. One public hearing was held on January 31, 2005 at Department of Natural Resources and Environmental Control's (DNREC) auditorium at 80 Kings Highway, Dover, DE at 9:30 a.m. Oral and written comments concerning the Qualified Allocation Plan were received and recorded at the hearings. Oral and written comments were accepted until January 31, 2005. A transcript of the hearings is available for review at DSHA's Dover 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 owner's 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 – See separate Tax-Exempt Bond Application**

Properties financed with tax-exempt bonds may receive 4% Tax Credits without participating in the annual competitive allocation process described in this Plan. In order to receive tax credits, properties must receive a determination that they satisfy the requirements for the allocation under the Qualified Allocation Plan (QAP) pursuant to the IRS Code Section 42(m)(1)(D). However, complete applications must be submitted and approved by DSHA 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, an application must score a minimum of fifty (50) points. Finally, the applicant must meet the requirements of Preservation Expiration Housing or Conversion Housing as defined pursuant to the QAP; except that, for the purposes of the 4% Tax credits only, DSHA, upon a showing of 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.

**Note: Developments proposed to be financed with tax-exempt mortgage revenue bonds (MRB) receiving Private Activity Volume Cap and requesting funding from the Housing Development Fund, must apply to DSHA during DSHA's annual Tax Credit application round for 9% credits. (Please see HDF Supplement for more information).**

## **APPLICATION FEES AND PROCESSING**

Pursuant to 31 Del.C. § 4028, upon receipt of an application, DSHA will notify any state senators and representatives whose districts include the area where the applicant's proposed development is located, as well as the chief executive 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 x ten (10) years is due. Prior to the allocation of Credits, issuance of IRS Form 8609 or Carryover Agreement, whichever is issued first, a \$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.