

QAP & Multifamily Rental Housing Program Guide – 2011 Revisions Based on Public Comments – November 2010

I. Threshold Criteria:

Final Draft 2011 Revision: Add text to clarify that all applications must comply with applicable federal and State laws for the financing requested, including all federal and State fair housing laws and specify that the Department may remove from processing projects that, in the Department's sole discretion, fail to demonstrate compliance with applicable federal and State laws, including fair housing.

Summary of Comments: Comments were not received directly on this issue although a number of comments raised questions about the Department's efforts to affirmatively further fair housing. This change clarifies that the Department may fail a project at Threshold for non-compliance with applicable federal and State requirements for the financing requested.

3.2.1 Previous Project Performance

2010 QAP Standard: -- A member of the development team may not have participated as an owner or manager in a project that defaulted on a Department or other government or private loan in the last 5 years

Initial Draft 2011 Proposed Change: Maintain the current standard for Department loans but reduce the timeframe for defaults for other government or private loans to 3 years

Final Draft 2011 Revision: Maintain 2010 QAP standard of 5 years

Summary of Comments: Minimal comments cautioning against relaxing standards

3.6.4 Definition of Elderly Housing and Elderly Household

2010 QAP Standard: at least one person in the HH is 62

Initial Draft 2011 Proposed Change: at least one person in the HH is 55

Final Draft 2011 Revision: Return to 2010 QAP definition of elderly household, as one with at least one person in HH at 62. Add definition for Elderly Housing to include any application proposing to restrict occupancy to one or more units in a project based on age. Require waivers for any elderly housing applications proposing that one or more of its units will not be rented to elderly households as defined by the Department.

Summary of Comments: Comments were received both in support and against the proposed age change. Most comments objected to the proposed waiver language. Comments included concern that change did not reflect actual experience concerning the age of households moving into senior buildings. Collection of data about local requirements for senior housing was endorsed by most comments.

3.6.5 Public and Assisted Housing Waiting Lists

2010 QAP Standard: 5 points are awarded to projects that establish a priority for households on waiting lists for public housing or other federal or State-assisted housing

Initial Draft 2011 Proposed Change: Scoring category deleted

Final Draft 2011 Revision: Category moved to threshold

Summary of Comments: Comments opposed deletion of the incentive for projects to accept referrals from PHAs and suggested that there be a requirement for developers to solicit and accept residents from public housing or other federal or State-assisted housing waiting list.

3.7.2 Rental Housing Fund – Maximum Loan Amounts and Cash Flow Splits

2010 QAP Standard: \$1.5M maximum loan amount with the ability to request an increase to \$2M. Cash Flow splits are permitted and capped at 25%.

Initial Draft 2011 Proposed Change: Maximum loan amount of \$2M or \$50,000 per unit, whichever is less. Cash flow splits permitted with borrowers and subordinate public lenders, cap is removed and review criteria are added, including but not limited to:

- the amount of the deferred development fee or developer equity in the budget;
- the developer's borrowing history or performance with the Department, including payment of cash flow or amortizing debt on other projects in the Department's portfolio;
- a subordinate public lender's commitment to affordable rental housing as evidenced by its adoption of affordable rental housing tools including inclusionary zoning, housing trust funds, preservation and homelessness prevention strategies, and policies that discourage discrimination based on source of income

Final Draft 2011 Revision: Increase maximum to \$2M, eliminate per unit cap, simplify CF split language as follows:

While the Department encourages repayment of its funds on an amortizing basis, the Department, at its discretion, generally permits loans funded by RHF or a portion thereof, to be repaid on a cash flow basis. DHCD loans are expected to be serviced from 75% of cash flow. Rates are generally set at 4% or below at the Department's sole discretion.

Summary of Comments: Comments generally objected to the per unit cap, requested changes to cash flow priorities, including 50-50 cash flow splits, and elimination of the criteria for determining cash flow splits. Concerns were raised about revised language concerning interest rates for CDA loans

3.7.3 Tax Credits: General

2010 QAP Standard: \$1.5M maximum

Initial Draft 2011 Proposed Change: Maintain \$1.5M cap and add a \$30,000 per unit cap

Final Draft 2011 Revision: maintain \$1.5M cap without a per unit cap

Summary of Comments: Comments generally objected to the proposed per unit cap and its feasibility in application.

3.9 Limitation on Fees

2010 QAP Standard: Developer fee (10%) can be earned on acquisition costs; there is no overall cap on builders fees; and the overall cap on developer fee is \$2.5M. Subsidy layering standards established by a MOU between HUD and CDA.

Initial Draft 2011 Proposed Change: Eliminate the ability to earn fee on acquisition costs for related party transactions, add a 15% overall cap for builders fees, add a separate civil engineer fee cap; allow master planning costs as an acquisition related cost; and reference new subsidy layering standards as published by HUD.

Final Draft 2011 Revision: maintain current standard for earning fee on acquisition for related party transaction; adopt the 15% builder fee cap and civil engineer cap with clarifying language, including ability to request waivers; and adopt master planning cost addition.

Summary of Comments: Majority of comments objected to elimination of fee for related party transactions, pointed out language problem on civil engineer fee. Others raised concerns about the fee limits for small projects; and agreed with the inclusion of master planning costs. No issues raised with other changes.

II. Scoring Criteria

Initial Draft 2011 Proposed Changes: Total points have been reduced from 325 to 305, with a resulting increased emphasis on Development Team Experience, Development Quality and Market Studies. General changes include:

- ability to deduct points for development team members with significant construction or project completion problems
- setting the Minimum Reserve for Replacement at \$300 per unit per year for all projects; currently senior projects have a \$250/unit/year minimum
- increasing the minimum Debt Service Ratio in the first year from 1.1 to 1 in the first year to 1.15 to 1. For all other amortizing debt the ratio was increased from 1 to 1 to 1.1 to 1.
- Clarifying and strengthening development quality standards related to green and energy efficiency.

Final Draft 2011 Revision: Total Points at 320; increase DSCR as proposed; clarifications to changes related to construction issues, development quality, and energy efficiency; minimum reserve for replacement set at \$300 per unit; allowable annual operating expenses increased to \$4,000 - \$6,000 per unit; operating reserve minimum increased to “at least 6 months”; capital needs assessment between “five and ten” years at the Department’s sole discretion.

Summary of Comments: Comments asked for clarification on issues related to construction and development quality, including energy efficiency. Comments also requested increases to operating expense allowances, reserve requirements, as well as time period for capitol needs assessments. Some comments questioned need to change DSCR and there were mixed reactions to the point changes in several categories.

4.1.3 Financial Capacity of Development Team

2010 QAP Standard: 20 points total with full points for net worth over 25% of total development costs (TDC) and liquid assets at 4% of TDC.

Initial Draft 2011 Proposed Change: 25 points total with the additional 5 points for liquid assets of 10% of TDC

Final Draft 2011 Revision: Maintain current scoring breakdown with the addition of 5 points for developers with liquid assets above 10% of TDC

Summary of Comments: Mixed comments with several objecting to tougher standards for liquid assets noting impact on small and nonprofit developers. Others supported increased points for developers with strong balance sheets.

4.1.4/4.1.5, Nonprofit, PHA and MBE/WBE Involvement

2010 QAP Standard: 15 points for Nonprofits, PHAs, or M/WBE with controlling ownership interest. 5 or 10 points for lesser involvement by any of the entities with incentives for using community-based nonprofits

Initial Draft 2011 Proposed Change: Total points for controlling ownership set at 10 for nonprofits, PHAs and M/WBE. 5 points for lesser involvement and elimination of incentives to use community-based nonprofits other than CHODOs.

Final Draft 2011 Revision: Return to current standard of 15 points for controlling ownership interest by nonprofit, PHA, or MBE/WBE. Lesser points for lesser involvement eliminating incentive to use community based nonprofits other than CHDOs. Corrected dropped language concerning MBE/WBE civil engineer.

Summary of Comments: Mixed comments with general concerns expressed about diminishing preferences for nonprofits, MBE/WBEs and PHAs. Some support for simplifying or eliminating the incentive for community-based non-profits. Questions raised about deletion of specific language referencing qualified MBE/WBE civil engineer firms.

4.2.2 Income Targeting

2010 QAP Standard: 25 points total with 5 bonus points for providing 10% of the units at 30% AMI and 20 points based on weighted average including 60% AMI and below.

Initial Draft 2011 Proposed Change: Reduce total points to 20 retaining the 5 bonus points for units at 30% AMI. The remaining 15 points are for income targeting based on a weighted average for units at or below 50% AMI.

Final Draft 2011 Revision: Reduce total points to 20 retaining 5 bonus points for 30% units but use weighted average break-down that includes points for 50-60% AMI units

Summary of Comments: Mixed comments about lowering the overall score and general opposition to eliminating points for units at 50-60% AMI.

4.2.3 Housing with Individuals with Disabilities

2010 QAP Standard: 5 bonus points for projects that target up to 10% of the units to persons with disabilities.

Initial Draft 2011 Proposed Change: The disabled household must be at 50% AMI or below to receive the 5 bonus points. The market study must also show a demand for these 50% units.

Final Draft 2011 Revision: Adopt 50% AMI requirement for disabled units but delete market study requirement

Summary of Comments: Generally receptive to 50% AMI addition with some concern that it will be difficult for market study to document demand because of insufficient or unavailable data. Some comments advocated stronger standards for targeted marketing and compliance monitoring, as well as limiting incentive to non-elderly disabled units.

4.2.5 Tenant Services

2010 QAP Standard: 20 total points

Initial Draft 2011 Proposed Change: Reduce total points to 15 and add mandatory services that are targeted and designed to assist residents with housing stability, including counseling/training on maintaining successful tenancy, money management, financial literacy, basic household management, and access to social services and primary health care. Failure to provide the above mandatory services will result in zero points for this category regardless of the other services provided.

Final Draft 2011 Revision: Add a threshold requirement for a certification that project will provide services throughout the compliance period that address the following:

- **General occupancy developments must deliver or coordinate services that: improve building and unit maintenance; stabilize occupancy by improving residents' abilities to uphold their lease obligations; and enhance quality of life and self-sufficiency for residents, including children;**
- **Senior occupancy developments should deliver or coordinate services that: stabilize occupancy by improving residents' abilities to uphold their lease obligations throughout the aging process; and enhance quality of life through**

improved access or information concerning services and benefits, health promotion, community building and socialization.

- **Developments that include populations with special needs should ensure that the special need populations served are able to benefit and access the services provided to the general population at the property.**

Additionally, score tenant services with a maximum of 15 points, including 2 points for internet access and services, 3 points for projects that rely on community links for services rather than direct service provision, 5 additional points for direct services, and a final 5 points for establishing service escrow accounts. Require bond projects to score at least 5 points in tenant services. See the 2011 Revised Guide for specific language.

Summary of Comments: General opposition to the mandatory tenant services listing that did not distinguish among project populations. Certification was suggested as possible means to achieve goal while simplifying scoring. Comments also noted that over time type and need for services can change. Issues raised about the monitoring of mandated services over time.

4.4.2 Long Term Operating Subsidies

2010 QAP Standard: To receive full points (10), the property must have a per unit per year subsidy of \$400 for HOME participating jurisdictions and \$200 for HOME non-participating jurisdictions

Initial Draft 2011 Proposed Change: To receive full points, the per unit per year subsidy was increased to \$1,000 for HOME participating jurisdictions and \$500 for non-participating jurisdictions.

Final Draft 2011 Revision: Maintain 2010 QAP standard at \$400 and \$200.

Summary of Comments: Generally, comments found increased standard unreasonable in light of current budgetary situation but some supported proposed change.

4.5 Construction or Rehabilitation Costs

2010 QAP Standard: Project lose 5 points for construction costs in excess of published gross square footage amounts

Initial Draft 2011 Proposed Change: Projects will lose 5 points for high construction costs based on either gross square footage or per unit. Construction costs in excess of \$250,000 per unit would result in a 5 point deduct.

Final Draft 2011 Revision: Drop per unit limits; maintain deducts for going over limits

Summary of Comments: Generally, comments objected to per unit limit.

6.1.7 Developer Fee Disbursement

2010 QAP Standard: 25% treated as overhead and disbursed throughout construction; the remaining 75% at completion and cost-certification

Initial Draft 2011 Proposed Change: 25% may be disbursed as overhead at initial closing; 25% at substantial completion and 50% after cost certification

Final Draft 2011 Revision: 25% may be disbursed at initial closing or throughout construction with additional 25% at substantial completion. Final 50% may be disbursed after final closing Substantial completion is determined by the issuance of an acceptable certification of substantial completion by the project architect

Summary of Comments: Comments generally supportive of relaxed standards for release of fee at initial closing. Clarification asked concerning what constitutes substantial completion and whether fee can be distributed during construction.

III. Department Fees

2010 QAP Standard: Legal fees of \$20,000 for the first loan and \$1,000 for each additional loan. Tax Credit (TC) Compliance Monitoring fee set at \$25/unit/year. Application Fee \$1,000. Assumption Fee is 1%. TC Allocation Amendment Fee: \$1,000. Cost of Issuance (COI) capped at 2% of loan amount for the parity indenture.

Initial Draft 2011 Proposed Changes: Fees increased as follows: Legal fees: \$25,000 for first loan and \$5,000 for each additional loan; TC compliance monitoring fee \$35/unit/year; Application fee \$2,000; Assumption fee 1.5%; TC Amendment Fee \$4,000; COI – actual for all loans

Final Draft 2011 Revision: Adjust increases so that application fee is \$1,500 and TC compliance fee is \$30. \$30 TC fee will go into effect for CY 2011 and thereafter. First billing for new TC fee will occur in January 2012 for all TC units in service in CY 2011.

Summary of Comments: Concern that increased fees pose a hardship for small projects; PHAs and nonprofits developers. Request for phase-in for increases in monitoring fee.

IV. Additional Changes Based on Comments Received

The Department received a number of comments on issues it had not proposed for revision in the Initial Draft. Based on a thorough review of those comments, the Department has incorporated the following additional changes into the Final Draft 2011 Revision:

3.7.3.4 State 30% Basis Boost

Final Draft 2011 Revision: Family projects in areas with indicators above statewide averages expressly added to existing list of projects eligible for 30% State basis.

3.8.1 Acquisition Price

Final Draft 2011 Revision: Policy related to allowable reimbursable costs under “As is” appraised value is clarified.

4.3.3 Housing in Communities with Indicators Above Statewide or County Averages

Final Draft 2011 Revision: This category was broken out separately from the Housing in BRAC-impacted counties with no change in total points (10). However, the category was amended to allow a family project to receive 5 of the 10 points if it could show that it was located in specified areas with key indicators higher than the county-wide average for its respective county.

Summary of Comments: A number of comments regarding the local support and contribution requirements were received. Generally, the comments asked that the requirement for Tax Credit only projects be eliminated. Some argued that the requirement interfered with the Department’s obligations to affirmatively further fair housing, violated federal fair housing requirements, or was not mandated by State law. Some comments supported the concept of obtaining local approval because it allowed local housing priorities to be addressed. The Department appreciates the thoughtful comments received on this topic. Based on the Office of the Attorney General's interpretation of State law and the Department's longstanding practice of requiring local resolutions, the current local approval process requirements have not been changed in this QAP. The Final Revision incorporates other changes suggested by those commenting on this issue and which the Department determined would further encourage the development and/or preservation of non age-restricted affordable housing in areas of opportunity. The changes to Section 3.7.3.4 State Basis Boost and the addition of county-wide indicators to Section 4.3.3 are examples of these changes.