

# 2021

## **LOW INCOME HOUSING TAX CREDIT Qualified Allocation Plan**

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## **Introduction and Authority**

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The Tax Reform Act of 1986 established the Federal Low Income Housing Tax Credit (LIHTC) Program.<sup>1</sup> The LIHTC Program was subsequently made permanent by the Revenue Reconciliation Act of 1993 as further amended by The Community Renewal Tax Relief Act of 2000, the Housing and Economic Recovery Act of 2008, the American Taxpayer Relief Act of 2012, and Protecting Americans from Tax Hikes (PATH) Act of 2015, and the Consolidated Appropriations Acts of 2018 and 2021, among others.

The LIHTC Program was created to encourage the private sector to invest in the construction and rehabilitation of housing for low and moderate-income individuals and families. Project owner/investors can claim the LIHTC on their federal income tax return each year for a period of 10 full years. However, Projects generally must meet certain requirements for low-income use for a minimum of 30 years per federal requirements.

Pursuant to Internal Revenue Code (IRC) Section 42(h)(8)(A), the Mayor delegated the authority and assigned the responsibility of administering the LIHTC Program to the District of Columbia Department of Housing and Community Development (DHCD or the Department) in Mayor's Order 87-72.

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<sup>1</sup> This is to be differentiated from the District of Columbia Low Income Housing Tax Credit (DC LIHTC). For a discussion of the DC LIHTC program and its relation to the District's federal LIHTC program please see <https://code.dccouncil.us/dc/council/code/titles/47/chapters/48/>.

## Qualified Allocation Plan

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Federal law requires the District of Columbia to adopt a plan to allocate the LIHTC to Projects based on federally mandated requirements and priority needs determined by the District. The District's LIHTC Qualified Allocation Plan (QAP) is intended to ensure the selection of only those Projects that comply with federal law and address, on a priority basis, the District's housing needs.

These allocation procedures govern the award of the District's LIHTC and apply to residential rental housing financed in conjunction with: (1) private lenders; (2) tax-exempt bonds; and (3) local or federal loan programs. These procedures are automatically renewed annually, unless amended or replaced. In the event that federal law changes after the QAP is adopted, or additional regulatory guidance or clarifications regarding the LIHTC program become available, DHCD reserves the right to modify, to supplement or to make conforming amendments to this QAP and all related documents without undergoing a formal amendment process, including additional public hearings. In addition to notifying affected tax credit program applicants, information about such subsequent changes will be posted on DHCD's website at [www.dhcd.dc.gov](http://www.dhcd.dc.gov).

### Determining the LIHTC

The tax credits are generally provided to Project owners in equal annual installments over a 10-year period. The tax credits may not exceed the applicable percentage of the qualified basis of each low income building in the Project as defined in IRC Section 42(d):

- New construction and rehabilitation Projects are eligible for a fixed tax credit of not less than 9% if placed in service after July 30, 2008.
- Projects financed with tax exempt bonds under IRC Section 103 or involving the acquisition of existing buildings (when combined with substantial rehabilitation) are eligible for a fixed tax credit of not less than 4% if placed in service after December 31, 2020<sup>2</sup>.
- Projects located in Qualified Census Tracts (QCT) or a Difficult Development Area (DDA), or other tracts as defined in this QAP, are eligible for a boost to their eligible basis of up to 30% as needed to guarantee the Project's financial feasibility.

A reservation of tax credits is made after DHCD does an initial review of the development budget sources-and-uses statement to determine the Project's feasibility and is conditioned upon the development's sponsor meeting certain requirements as described in this QAP. Those applicants satisfying the requirements will be given an allocation of tax credits. If the development is placed in service in the year of allocation, it qualifies for an allocation for that year and IRS Form(s) 8609 will be issued on or before December 31. If the development is not placed in service in the year of allocation, the Sponsor/Developer can request a Carryover Allocation (see Carryover Allocation Application section below). Upon this request, DHCD

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<sup>2</sup> As enacted by the Consolidated Appropriations Act 2021, under IRC Section 42(b)(3), the applicable percentage for LIHTC allocations made after December 31, 2020, shall not be less than 4%.

will review the development budget for continued feasibility to reflect any changes in the development's cost and/or financial structure before granting a carryover allocation.

After a building has been placed in service (i.e., the building rehabilitation is substantially complete and/or a Certificate(s) of Occupancy is received), the Sponsor/Developer will request IRS Form(s) 8609 to begin claiming the Tax Credit on its federal tax return. A final analysis will be performed at the time of placement in service to determine the final Tax Credit Allocation Amount, which is the lesser of: (1) the tax credits necessary to make the development feasible; or (2) the amount of the earlier carryover allocation.

### **Tax Credits Available**

The amount of 9% Tax Credits available for the District to allocate in each calendar year reflects the sum of the amounts allowed as the per-capita State Ceiling under IRC Section 42(h)(3)(C). This amount may be increased by: (1) returned tax credits from prior years; (2) tax credits allocated to the District from the national tax credit pool; or (3) new legislation increasing the amount of tax credits distributed to each state.

Any unallocated or recovered tax credits or a combination of both may be: (1) awarded as part of the current year cycle(s) of awards for tax credits; or (2) carried over to the next year's cycle(s) of awards at DHCD's discretion.

## DHCD Program Overview

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### Eligibility

Experienced for-profit and non-profit Sponsor/Developers that are in good standing with the District (as defined in the Development Team Thresholds section of the Threshold Eligibility Requirements of the QAP) are eligible to apply for a reservation of LIHTC to fund residential rental property developments located in the District that are affordable to households earning 60% of the Area Median Gross Income (AMGI or AMI) or less, or 80% AMGI or less if the Average Income minimum set-aside election is used as described further on page 17. Project eligibility requirements are defined in the Threshold Eligibility Requirements section of the QAP.

### Types of Federal Low Income Housing Tax Credits

There are two types of federal LIHTCs: 9% Tax Credits from the District's per-capita State Ceiling and non-competitive 4% Tax Credits issued to qualifying Projects financed with tax-exempt bonds.

- 9% Tax Credit: The 9% Tax Credit is competitively awarded to eligible Projects based on the selection criteria in this QAP, as may be clarified by the most recent Consolidated Request for Proposals for Affordable Housing Projects (Affordable Housing RFP). The 9% Tax Credit is based on a 10-year present value calculation of 70% of the qualified basis of each building in the Project. For those non-federally subsidized new buildings placed in service after July 30, 2008, the applicable percentage must be no less than 9%. The maximum LIHTC amount allocated to a Project is determined by a formula that considers the amount of eligible costs and the percentage of qualified tenants. Projects must include either new construction, or substantial rehabilitation totaling the greater of \$7,100 per unit for calendar year 2021 (subject to annual increase) or 20% of the adjusted basis of the building(s).
- 4% Tax Credit: Projects financed with certain tax-exempt bonds may be eligible to receive a 4% Tax Credit without regard to the District's per capita State Ceiling. The 4% Tax Credit is based on a 10-year present value calculation of 30% of the qualified basis of each building in the Project. For new buildings placed in service after December 31, 2020, the applicable percentage must be no less than 4%. For other buildings, the applicable percentage for the 4% Tax Credit is a rate published by the Internal Revenue Service (IRS) for:
  - the month in which the building is placed in service; or
  - at the election of the Project owner, the month in which the tax-exempt bond obligations are issued.

Although tax-exempt bond financed Projects need not compete for an allocation through the competitive process, they must be evaluated against the Threshold Eligibility Requirements. Further, they must comply with the monitoring procedures in DHCD's LIHTC Program Compliance and Monitoring Reference Guide, which is incorporated by reference in this QAP, and available here:

<https://dhcd.dc.gov/service/project-monitoring>.

Projects that meet the substantial rehabilitation requirements under IRC Section 42(e)(3) also may be eligible for a tax credit based on the acquisition of the building. In this case, the Applicable Percentage is the rate applicable to the 4% Tax Credit for:

- the month in which the acquisition occurs; or
- at the election of the Project owner, the month in which the Project owner and DHCD enter into a binding agreement as to the amount of LIHTC allocated to the building.

### **Combining the 9% and 4% Credit**

While generally a qualified Project is awarded only 9% Tax Credits or 4% Tax Credits, it may be possible, under specific facts and circumstances, for a qualified Project to receive both types of Tax Credits.

### **Authorization of the Director**

This QAP contains the general dates for application, carryover, and monitoring of the District's LIHTC Program. However, the DHCD Director maintains discretion with respect to Program administration, as permitted by IRS guidance or law.

### **Fees**

The following fees are assessed to a Project: (1) Issuance Cost, which includes application, reservation, and allocation fees; and (2) Compliance Cost, which includes all compliance, monitoring, and inspection fees. Full and timely payment of all fees is a requirement of every allocation. All issuance and compliance costs are non-refundable. See the table for more details on fees.

<b>FEES</b>		
<i>Fee Name</i>	<i>Amount</i>	<i>Applicability</i>
Application Fee (Non-profit)	\$500.00	9%
Application Fee (For Profit)	\$750.00	9%
Reservation Fee: Assessed at the time a reservation is given to a Sponsor/Developer. The amount is due in full when the Sponsor/Developer accepts the reservation. No reservation will be valid if not accompanied by the reservation fee.	50% of 1% of the total 10-year allocation for the Project	9%
Allocation Fee on per capita Projects: Assessed when DHCD issues the carryover allocation.	50% of 1 percent of the value of the total 10-year allocation for the Project	9%
Allocation Fee for tax exempt bond funded Projects.	1% of the total 10-year allocation paid in two installments: a portion at closing and the remaining portion when DHCD issues the IRS Form(s) 8609.	4%
Compliance Monitoring Fee: All Projects that receive an IRS Form 8609. The fee will be due each year on February 15.	\$45 per unit per year for the first 15 years of the Compliance Period, or \$55 per unit per year for Projects selecting the Average Income minimum set-aside.  \$25 per tax credit unit per year (including employee units) starting from the 16th year of compliance or \$30 per tax credit unit per year for Projects selecting the Average Income minimum set-aside (not to exceed \$3,500 per Project after the initial 15 years of the Compliance Period).	9% and 4%
Re-inspection Fee: Projects failing an inspection and/or tenant file review that are issued an IRS Form 8823 must have a re-inspection and/or follow up tenant file review.	\$50 per hour (\$50 minimum) to re-inspect deficiencies as observed. Additional \$50 per hour (\$50 minimum) to review tenant files and any document forwarded to DHCD to correct noncompliance.	9% and 4%
Extension Fee: Sponsors/Developers unable to meet the deadline for a carryover allocation application may request an extension and pay a fee at the time the request is submitted.	A late charge of \$500 per day will be assessed for each calendar day past the due date that the Carryover Allocation application is not returned to DHCD.	9% and 4%
Allocation Modification Fee: Sponsor/Developers requesting modifications to the IRS Form 8609 where the modification is not the result of a DHCD administrative error.	\$1,000	9% and 4%



## 9% Tax Credits

Reservation applications for the 9% Tax Credit will be accepted and reviewed as part of DHCD's competitive Affordable Housing RFP process. DHCD will notify the public concerning the exact schedule of the competitive round(s) for the reservation of LIHTC, which generally will follow the timeline described below in this QAP. All applications must be submitted through DHCD's Online Application System. Additional information, including access to the online application, is available at DHCD's website: [www.dhcd.dc.gov](http://www.dhcd.dc.gov) or (202) 442-7200.

If the Project receives an award of 9% Tax Credits and is not placed in service by the end of the tax credit allocation year, IRC Section 42 allows the Project to receive a carryover allocation. This will allow the Project to be placed in service no later than the end of the second year following the carryover allocation year. Treasury Regulation Section 1.42 requires that an owner must document that 10 percent of the reasonably expected basis of the Project has been spent within 12 months of the carryover allocation date (the 10% Test).

For these Projects, DHCD requires the owner to submit:

1. an allocation application, which includes an itemized list of Project expenditures;
2. an owner's certification; and
3. a Certified Public Accountant (CPA)'s opinion documenting that the Project has met the 10% Test within 12 months of the date of the allocation of tax credits.

After construction is completed and the Project is placed in service, the Sponsor/Developer submits an application to DHCD requesting that IRS Form(s) 8609 be issued to allocate the tax credits to the Project. The application for the IRS Form(s) 8609 must consist of:

- a revised Project development budget and operating pro forma, adjusted to reflect the final development cost reflected on the cost certification prepared by the Project's CPA, and including a statement of the computation of the Project's development costs that qualify as eligible costs per IRC Section 42, in both Excel and signed PDF formats;
- a copy of the Accountant's/Owner's cost certification, including the 50% Test for projects using tax exempt bonds/4% tax credits;
- a draft of the IRS Form 8609 for each building in the Project;
- copies of the Project required DC licenses (for example, a basic business license) for the owner and management agent;
- D.C. Department of Consumer and Regulatory Affairs -issued Certificate of Occupancy, or equivalent documentation acceptable to DHCD, indicating that each building has been placed in service;
- a copy of the recorded Land Use Restrictive Covenants (i.e., the Indenture of Restrictive Covenants (Extended Use Agreement) for LIHTCs);
- a copy of the Project market study;

- a copy of the executed owner’s partnership or operating agreement, including all amendments, attachments and exhibits;
- evidence of LIHTC fees paid at closing; and
- a copy of the Project’s Federal applicable percentage rate lock agreement.

The schedule of milestones and deadlines for the 9% Tax Credit application and award process can be found in the current Affordable Housing RFP. Further details can be found in the QAP Underwriting Guidelines section.

### **Underwriting Process**

Underwriting will be performed on a Project at three stages: (1) before a reservation is awarded; (2) at carryover allocation; and (3) before an IRS Form(s) 8609 is issued evidencing the LIHTC allocation.

#### ***Before a Reservation Is Awarded***

The Reservation (Reservation or Reservation Letter) is a conditional commitment of LIHTC and, therefore, does not meet the definition of a binding allocation as stated in IRC Section 42. If the Project is not placed in service during the same calendar year as the Reservation Letter, then DHCD will issue a binding carryover allocation to the Sponsor/Developer if all of the requirements are met.

#### ***Surplus Reservations***

In the event that the supply of LIHTC, in a given year, exceeds the demand in the initial competitive round, those surplus tax credits may, at the sole discretion of the DHCD Director, be reserved in the following order of priority, without the need for an additional advertised competitive round:

- For Projects that: (1) received a Reservation from a prior year; (2) have sufficient eligible basis to qualify for additional tax credits; and (3) need additional tax credits in order to complete the Project’s funding in a manner that creates financial feasibility and economic viability.
- For Projects that: (1) are in a high state of readiness; (2) have sufficient eligible basis; and (3) need LIHTC in order to complete the Project’s funding in a manner that creates financial feasibility and economic viability, provided the Project has been approved through the competitive process.
- For Projects that: (1) have sufficient eligible basis; (2) are located in a strategic development zone; and (3) need LIHTC in order to complete the Project’s funding in a manner that creates financial feasibility and economic viability.

#### ***Forward Reservation***

Under certain conditions, a Project may be eligible to receive a Reservation of LIHTC from the District’s per capita State Ceiling for future years (known as a Forward Reservation). To receive a Forward Reservation, the Sponsor/Developer must agree to comply with all conditions

imposed by DHCD and the IRS. The following types of Projects may receive Forward Reservations from future years' LIHTCs:

- **Insufficient LIHTC:** A Forward Reservation may be approved for a Project that ranked high enough in a round of competition for an award, but for which there is insufficient remaining LIHTCs that can be allocated in the current year.

**Multiple Year Reservations:** For Projects that require more annual LIHTCs than available and/or reservations would be more appropriately staged over two or more years, DHCD may agree to reserve, subject to availability, LIHTCs from a future year(s). DHCD will determine if the benefits to the District are sufficient to warrant the issuance of a Forward Reservation. In most cases this determination will rely primarily on the following factors:

1. whether the Sponsor's/Developer's LIHTC request is large enough to require being split because an award in a single year would eliminate the availability of LIHTC to other competitive applicants; and
2. if the scope of the rehabilitation or construction is such that it is unlikely that the entire Project can be "placed in service" within the time frame required by the IRC.

### ***Projects Unable to Meet Deadlines***

Some Project(s) that have received Reservations are not able to meet the schedule outlined in the Reservation for reasons beyond the control of the Developer, but are Projects the DHCD Director may deem to be essential to DHCD's strategic plan or mission. In this event, the previous Reservation may be returned and, at the sole discretion of the DHCD Director, a Reservation from one future calendar year may be substituted for the LIHTC reserved under the returned Reservation.

### ***At the Carryover Allocation***

Sponsors/Developers that meet the requirements of the Reservation Letter shall receive a binding allocation agreement that meets all qualifications required under IRC Section 42. The Sponsor/Developer must incur more than 10% of the reasonably anticipated basis within 12 months of the tax credit carryover allocation date and then place the Project in service no later than the end of the second year following the year of the binding allocation. Failure to meet these requirements will result in the loss of the LIHTC for the Project.

Reservation Letters will identify a date certain by which Sponsors/Developers must certify that: (1) Projects have been placed in service; or (2) at a minimum, that more than 10 percent of the reasonably anticipated basis of the Project has been incurred. If the Sponsor/Developer has not met either of these requirements, the Reservation may be cancelled. Any LIHTC available from cancelled Reservations will be awarded to other Projects or carried forward in the District's unallocated pool.

### ***Before an IRS Form(s) 8609 Is Issued***

When buildings are placed in service, DHCD will complete a final evaluation of the Project to determine the LIHTC amount needed to make the development feasible. Only the amount needed for financial feasibility and economic viability will be allocated. In compliance with

Section 42(m)(2) and Section 42(h)(3)(c) of the Code and the Carryover Agreement and Allocation, DHCD will make a final determination of the LIHTC allocation prior to issuance of the IRS Form(s) 8609. Deferred developer fee will be viewed as a committed source at closing and will not be adjusted downward prior to DHCD's final housing credit determination. Any additional LIHTC previously allocated to Projects, above and beyond this amount, will be returned to DHCD.

Before the IRS Form(s) 8609 can be issued, DHCD must receive, review, and approve the documentation described above, which includes a revised, updated application that:

- adjusts the development budget (Form 202) to the sources and uses reflected on the Project cost certification;
- incorporates all changes in the development team and management group; and
- includes all of the additional requirements described above.

#### **4% Tax Credits**

If 50% or more of the aggregate basis of any building and its underlying land is financed with the proceeds of tax-exempt bonds (the 50% Test) issued by the DC Housing Finance Agency (DCHFA), Sponsors/Developers qualify to apply for noncompetitive 4% Tax Credits. If the 50% Test is not met, Sponsors/Developers may be eligible to receive LIHTC on the portion of the qualified basis financed with the bonds.

If competitive gap financing is required in addition to 4% Tax Credits, the Sponsor/Developer is required to apply for funding as part of the Affordable Housing RFP process. If competitive gap financing is not required and a Project wishes to exclusively request 4% Tax Credits, Sponsors/Developers must first apply to DCHFA. Consistent with an inter-agency agreement between DHCD and DCHFA, before the Project closes on the tax-exempt bonds, DCHFA submits the application to DHCD for the allocation of tax credits. DHCD oversees the determination that Projects comply with the QAP's Threshold Eligibility Requirements and are awarded tax credits in the minimum amount necessary for financial feasibility, but relies on the DCHFA underwriting of tax-exempt bond Projects and accepts DCHFA's determinations for those Projects if competitive gap financing is not required. Applications for 4% Tax Credits without competitive gap financing are accepted on a rolling basis and must be submitted directly to DCHFA via its online portal at <https://mlni.dchfa.org/> (first time applicants will need to request a user id, which can be found on the portal homepage).

After the Project is placed in service, the owner submits an application to DCHFA for the IRS Form(s) 8609. DCHFA evaluates the request and transmits the request for IRS Form(s) 8609 to DHCD for final review and issuance.

## Set Aside

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### Non-Profit Set-Aside

As required by federal law, a minimum of 10% of the per capita State Ceiling must be set-aside exclusively for Projects developed by Qualified Non-profit Sponsor/Developers. To be eligible to receive a reservation from this set-aside, Sponsor/Developers must show that they will meet the following federal requirements throughout the Compliance Period:

1. must be an organization described under IRC Sections 501(c)(3) or 501(c)(4) and exempt from tax under IRC Section 501(a) or be a wholly owned subsidiary of a Qualified Non-profit Organization;
2. must have as one of its tax-exempt purposes the fostering of low income housing;
3. must own a controlling interest in the Project either directly or through a partnership;
4. must materially participate in the Project's development and operation through regular, continuous, and substantial actions; and
5. must not be affiliated with or controlled by a for-profit organization.

Reservations from the non-profit set-aside are permitted when a partnership between non-profit and for-profit entities exists, only if each organization is independently controlled and operated, the non-profit materially participates in the Project's development and operations, and the non-profit maintains a controlling interest in the Project through the partnership structure (e.g. non-profit or an affiliate of the non-profit is the managing member of the general partner of the limited partnership, or the managing member of the limited liability company, as applicable, that owns the Project).

Some LIHTC Projects may be eligible for property tax and recordation tax exemption authorized by DC Official Code section 47-1005 ("Tax Relief Program"). Applications for the Tax Relief Program should be made to DHCD. More information can be found at: <https://dhcd.dc.gov/page/tax-relief-certification-forms-nonprofit-affordable-housing-developers>.

Additional requirements for non-profit participation and rights of first refusal are in the LIHTC-Specific Requirements section below.

### Director's Special Initiatives Program

The DHCD Director may use up to 25% of any annual per capita allocation and 25% of any unallocated carryover of a prior year allocation as a Director's Special Initiatives program for stimulating development to create a more equitable and inclusive District of Columbia community that aligns with District development priorities outlined in policy documents including, but not limited to, the Affordable Housing RFP, the Consolidated Plan, the Annual Action Plan, and the District's Housing Framework for Equity and Growth.

## **Competitive Application Review and Selection Process**

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DHCD will evaluate all applications for LIHTC against the Threshold Eligibility Requirements outlined in this document. Applications must meet each requirement as indicated in this section or the Project will not pass Threshold Review and will not move to the next evaluation stage.

There will be two application windows and two opportunities for Projects to be evaluated:

1) **Priority Evaluation**

After the first application deadline, applications that meet all of the Threshold Eligibility Requirements and qualify for one of the Priority Classifications (defined on page 18) will move forward to the Priority Evaluation stage, which will be conducted first, and result in the first round of selection of Projects for further underwriting.

2) **General Evaluation**

Project Applications that pass Threshold Review but do not meet one of the Priority Classifications will be retained and evaluated during the General Evaluation stage. The General Evaluation stage will occur after the second application deadline.

## **Threshold Eligibility Requirements**

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Projects applying for the 9% Tax Credit or the 4% Tax Credit must meet all of the Threshold Eligibility Requirements defined in this QAP unless otherwise indicated, and as clarified in the current Affordable Housing RFP. The Threshold Eligibility Requirements are intended to eliminate Projects that do not meet basic tax credit program guidelines and to ensure that LIHTCs are reserved for Projects that are viable and in compliance with District and federal requirements.

Projects that do not meet the Threshold Eligibility Requirements, as evidenced by a fully completed application with accompanying attachments, will not be evaluated and ranked during competitive rounds. Projects applying for non-competitive 4% Tax Credits with no additional DHCD gap financing must also meet Threshold Eligibility Requirements unless otherwise indicated. In addition, all Projects must fully comply with all requirements in IRC Section 42, and all 4% Tax Credit Projects must comply with DCHFA's Mortgage Revenue Bond Program (MMRB) guidelines. For more information on MMRB guidelines visit [www.dchfa.org](http://www.dchfa.org).

Eligible Project types include Production and Preservation, defined as follows:

- **Production Projects** are new construction Projects or Projects that rehabilitate vacant buildings.
- **Preservation Projects** include the acquisition and rehabilitation or one-for-one, on-site replacement of existing, occupied housing where affordability will be preserved for existing low-income residents. The property may have an existing and expiring covenant, affordability deed restriction or operating subsidy, or it may currently be unsubsidized..

As further described in the Affordable Housing RFP, Projects may also be classified as a combination of both Production and Preservation Project types. Similarly, it is possible for both Project types to produce net new affordable units ("Net New Units") by placing affordability restrictions on units that were not previously subject to affordability restrictions. Net New Units can be produced through new construction Projects, through Projects that preserve naturally affordable market-rate housing that has no existing affordability covenant, or through the addition of units to a Preservation Project that is already subject to an existing affordability covenant.



THRESHOLD ELIGIBILITY REQUIREMENTS	Applicable?	
	Production	Preservation
<i>Project Criteria</i>		
Project Eligibility and Certifications	✓	✓
Permanent Supportive Housing	✓	NA
Site Control	✓	✓
Entitlements and Development Review	✓	✓
<i>Financial Criteria</i>		
Development Budget and Operating Proforma	✓	✓
Acquisition Cost Reasonableness	✓	✓
Financing Letters and Terms	✓	✓
Financial Information for Operational Projects	NA	✓
<i>Applicant Criteria</i>		
Development Team Thresholds	✓	✓
<i>Reports and Plans</i>		
Appraisal	✓	✓
Market Study and Market Demand Analysis	✓	✓
Environmental Site and Physical Needs Assessments	✓	✓
Architectural Plans and Cost Estimates	✓	✓
<i>Compliance Criteria</i>		
Green Building Design and Construction	✓	✓
Relocation and Anti-Displacement Strategy	✓	✓

## ***Project Criteria***

### **Project Eligibility and Certifications**

Projects requesting LIHTCs must meet the tax credit program’s basic eligibility requirements as described below. In addition, if requesting competitive gap financing from DHCD, Projects are required to meet all additional requirements further detailed in the Affordable Housing RFP. Competitive gap financing includes any competitive financing sources offered through the Affordable Housing RFP such as 9% credits, local and federal loans and grants, and rental assistance.

### ***Basic Eligibility***

Projects must involve new construction, acquisition, or rehabilitation. For projects involving rehabilitation, the rehabilitation costs must be the greater of:

- \$7,100 per unit for calendar year 2021 (subject to annual increase); or
- 20% of the adjusted basis of the building(s).

This minimum rehabilitation requirement must be met within the two years preceding the placed-



in-service date. For Projects receiving acquisition tax credits for existing Projects, DHCD may, as a condition for a reservation of tax credits, require the Sponsor/Developer to provide a legal or Certified Public Accountant's opinion regarding the Project's satisfaction of the requirements of IRC Section 42(d)(2)(B)(ii) (i.e., the 10-year rule) or exemption thereunder.

Projects also must meet the following minimum affordable household occupancy restrictions, restricted rent levels, and Project size limitations.

- a. **Minimum Affordable Household Occupancy Restrictions:** At a minimum, Sponsor/Developers must elect that either:
  - 20% of the units in the Project or more must be rented to families with incomes at 50% or less of AMGI;
  - 40% of the units in the Project or more must be rented to families with incomes at 60% or less of the AMGI; or
  - 40% of the units in the Project or more are rent-and-income-restricted to families with incomes at 80% or less of the AMGI, as long as the average does not exceed 60% of AMGI (known as the "Average Income" minimum set-aside, or "Income Averaging").

The minimum set-aside election is irrevocable once made on IRS Form(s) 8609. Income Averaging will be considered for Projects that have not yet requested issuance of IRS Form 8609(s) on a case-by-case basis by DHCD and/or DCHFA, as applicable. Applicants that elect the Income Averaging minimum set-aside shall comply with the following restrictions and requirements:

- 100% of the units are LIHTC-eligible, except for preservation Projects with current tenants with documented income above 80% of AMGI;
- Income and rent levels shall be limited to the four following income bands: 30% of AMGI, 50% of AMGI, 60% of AMGI, and 80% of AMGI;
- The average income of the units shall be limited to 59% AMGI;
- At least 10% of the units must be restricted at 30% AMGI;
- Applicants must provide reasonable parity between unit size and buildings, as applicable, at each income band;
- All buildings in the Project shall be included as one multiple building Project, as referenced on line 8b of IRS Form 8609, except on a case-by-case basis; and
- 4% Tax Credit Projects that elect the Income Averaging minimum set-aside must meet either the 20/50 or 40/60 minimum applicable to tax-exempt bond financing.

DHCD reserves the right to allow exceptions to these requirements on a case-by-case basis.

- b. **Maximum Rent Levels: Low-Income Units** in the Project must be rent restricted as defined by IRC Section 42(g)(2) for a period of at least 40 years (the Compliance Period of 15 years and an extended use period of at least 25 years, for a total period of

at least 40 years). Before DHCD issues the IRS Form(s) 8609, the Sponsor/Developer must provide evidence that the Land Use Restrictive Covenants has been recorded in the land records.

### ***Project Certifications***

As further described in the Affordable Housing RFP, applicants will be required to complete various Project certifications.

### ***Inclusion in Priority Evaluation Stage***

Applications seeking to be included in the Priority Evaluation stage will need to certify that the Project meets one of DHCD's Priority Classifications as outlined below and further detailed in the Affordable Housing RFP. Projects that meet a Priority Classification will be evaluated first.

#### 2021 Priority Classifications\*

##### Priority Classification #1

- Projects located in Rock Creek West, Near Northwest, or Capitol Hill Planning Areas

##### Priority Classification #2

- Projects located in Rock Creek East, Upper Northeast, Mid-City, Central Washington, or Lower Anacostia Waterfront & Near Southwest Planning Areas and meet at least two of the following criteria:
  1. 50% or more of the total units qualify as Net New Units;
  2. The applicant has submitted for building permits for the Project; or
  3. At least 50% of the requested DHCD financing is dedicated to support 30% AMGI units, or the Project qualifies as a Site-Based Permanent Supportive Housing Project as defined in the Homeward DC 2.0.
- Projects located in Far Northeast & Southeast and Far Southeast & Southwest Planning Areas and meet at least two of the following:
  1. 50% or more of the total units qualify as Net New Units;
  2. The applicant has submitted for building permits for the Project; or
  3. At least 20% of the total units are designated for 80% AMGI or market rate households

\* Priority Classifications are subject to change for each competitive Affordable Housing RFP round.

### ***Narrative Completion and Community Engagement Plan***

Applicants will need to certify that a Project narrative was submitted on the most recent form provided as part of the Affordable Housing RFP. Among other Project requirements, the narrative must include a completed Community Engagement Plan that outlines how the applicant has and will continue to engage the community about the planned Project.

### *General Compliance Certifications/Affirmations*

Each applicant must certify that the Project is, and will be, in compliance with all applicable federal and local laws and regulations as referenced in the supplemental Compliance and Monitoring Reference Guide.

Approval or letters of support by the Advisory Neighborhood Commission (ANC) or other community groups will not be considered as part of the application.

### *LIHTC-Specific Requirements*

As part of the Project narrative submission and accompanying certifications, applicants requesting 9% or 4% Tax Credits will be subject to the following LIHTC-specific requirements.

### *Year 15 Plan and Transfer or Sale of Property*

Each applicant must present a clear plan for the Project at the end of the initial 15-year Compliance Period. The plan must include support and rationale for the following:

- The exit strategy for the limited partner or investor member, as applicable, and the anticipated ownership changes.
- Any anticipated refinancing, re-syndication, or sale to a third party.
- How affordability will be maintained through the minimum 40-year extended affordability period.

Applicants must agree to maintain the minimum 40-year extended affordability period by waiving their right to seek a qualified contract for the Project purchase after the 14th year of the Compliance Period.

Any application submitted by an applicant with a principal that was or is currently a principal in an Ownership Entity that has previously requested a Qualified Contract will not be considered for any reservation or allocation of credits at DHCD's discretion.

### *Non-profit Participation and Right of First Refusal*

Projects in which a Qualified Non-profit Organization holds a right of first refusal to purchase the Project at the end of the Compliance Period based on IRC Section 42(i)(7), as may be amended from time to time, must meet several requirements. The right of first refusal may be exercised anytime within a twenty-four (24) month period, or longer period, after the close of the Compliance Period. Once exercised, the Qualified Non-profit Organization shall have at least twelve (12) months to close on the purchase of the Project or the interests of the non-managing members of the Ownership Entity. The Qualified Non-profit Organization may assign the right of first refusal to a governmental entity, another Qualified Non-profit organization, or a tenant organization. In all instances where the non-managing members of the Ownership Entity have the right to consent to the exercise or assignment of the right of first refusal, such consent shall not be unreasonably withheld, conditioned or delayed. The non-managing members of the Ownership Entity may not withhold consent for a non-material breach of the Ownership Entity organizational documents. The purchase price shall be calculated by the Project accountants and shall be based on the minimum purchase price in IRC Section

42(i)(7)(B) plus the amount needed to pay any unpaid fees, loans or other amounts due to the non-managing members of the Ownership Entity from the managing member or general partner, as applicable.

The right of first refusal cannot be conditioned upon receipt by the Owner of a bona fide offer from any party, including a third party. The right of first refusal as outlined in IRC Section 42(i)(7), as may be amended from time to time, is not the same as a right of first refusal under statutory, court-interpreted, or common law.

All rights of first refusal granted to Qualified Non-profit Organizations are subject to the requirements of the Tenant Opportunity to Purchase Act (TOPA) and the District's Opportunity to Purchase Amendment Act of 2008, DC Law 17-286 (DC Official Code Section 42-3404.31 et seq.), as either may be amended from time to time.

### **Permanent Supportive Housing**

For new construction rental Projects—and rental Projects that rehabilitate existing, vacant buildings—at least 5% of the units, and no less than one unit, must be designated as PSH as defined in this QAP. The PSH requirement does not apply to Projects applying solely for non-competitive 4% Tax Credits, the Director's Special Initiative Projects, or Projects that receive surplus credit reservations.

For Projects that preserve existing housing and also add net new units, the PSH set-aside requirement will apply only to the new units created.

Applicants must certify the number of PSH units proposed and acknowledge the District's PSH requirements (in a format specified in the Affordable Housing RFP and Online Application System). PSH units that are used to meet the 5% set-aside requirement must follow the Housing First model and fill vacancies through the Coordinated Entry System (as defined in the Affordable Housing RFP).

### **Site Control**

Applicants must have control of the site proposed for development. This may be in the form of:

- a current deed evidencing fee simple ownership;
- a lease option (lease term must be equal to or greater than the proposed financing term);
- a land or property disposition agreement (LDA or PDA) executed with the District of Columbia; or
- a contract of sale.

At the time of application, site control MUST extend for at least 180 days beyond the date of the application submission or be demonstrably renewable so that site control can extend through the 180-day period.

### **Entitlements and Development Review**

The applicant must demonstrate that the proposed development is matter of right, or that applicable zoning approvals have been applied for. For any proposed Project that requires a

more substantial zoning decision or design review, the Map Amendment application, Stage 2 Planned Unit Development (PUD) application, Design Review application, or consolidated PUD application is required to have been submitted to the Zoning Commission before application submission.

If a Project is in a Historic District or requires approval from the Historic Preservation Review Board (HPRB) for any other reason, HPRB approval of the conceptual design is required before application submission.

## ***Financial Criteria***

### **Development Budget and Operating Proforma**

The financial component of the application will be submitted using the most recent multi-tab spreadsheet titled “Form 202 – Application for Financing” (Form 202) that will be provided by DHCD (available within the Online Application System). Applicants will use this workbook to present the details of their proposal, such as the development budget, operating pro-forma, tax credit calculations and unit information, including an AMGI designation by unit size, which will be recorded in the Land Use Restrictive Covenants. Budgets must comply with the current version of DHCD’s Underwriting Guidelines, which are defined in this QAP and in each Affordable Housing RFP.

Projects that use 4% Tax Credits also must meet DCHFA’s underwriting standards. Applications for DCHFA financing only, without DHCD gap funding, must be submitted directly to DCHFA outside of the Online Application System. DCHFA application requirements can be found at [mlni.dchfa.org](http://mlni.dchfa.org).

### **Acquisition Cost Reasonableness**

Proposed property acquisition costs must be reasonable and may not exceed the property’s fair market value as evidenced by an appraisal. DHCD will determine reasonableness through an analysis of the appraisal and the proposed flow of funds. DHCD reserves the right to request a second appraisal.

For Projects where the property has already been acquired, acquisition cost reasonableness will be based on the original purchase price plus reasonable carrying and settlement costs. If the property was previously purchased by a party affiliated with the Developer/Owner/Sponsor, has increased in value, and the Project budget reflects the current appraised value of the property, DHCD expects a reasonable proportion of the net proceeds from the increased property value to be offset by a seller’s note or other similar instrument.

Projects that received or will receive discounted land or property through a District LDA or PDA must reflect the value of the write-down in their budget. The budgeted acquisition price for these Projects must either be zero, minimal, or if the budget reflects the full appraised value of the property, offset by a seller’s note or other similar instrument.

### **Financing Letters and Terms**

Applicants must submit letters of interest or letters of commitment from all participating lenders

and investors. Financing terms should be consistent with what is commonly available in the market for a particular funding source and will be evaluated on a source by source basis. Applicants intending to utilize the minimum set-aside for Income Averaging must submit written acknowledgment from the LIHTC investor/syndicator of this intention.

As part of each LIHTC equity Letter of Intent, applicants are required to ask potential investors or syndicators to submit a written acknowledgement that they have never sought to achieve early termination of a LIHTC extended use agreement through the qualified contract process, nor have they sought to undermine the exercise of a right of first refusal or a non-profit's option to purchase in prior transactions as described in more detail in the Non-Profit Participation and Right of First Refusal section.

### **Financial Information for Operational Projects**

For existing and occupied buildings/properties ONLY, additional information is required to describe the Project's current status, including;

- the current debt structure;
- any operating subsidies currently available to the Project;
- any supportive services currently provided;
- the current occupancy; and
- Project financials.

The applicant must provide audited financial statements for the prior three fiscal years of Project operations. If audited statements are not available, then three fiscal years of un-audited year-end financial statements AND three corresponding years of certified federal income tax returns of the Project must be submitted.

Projects applying through the Affordable Housing RFP must provide a current rent roll, documentation of all existing loans secured by the property, including DHCD loans, and a proposed flow of funds for the recapitalization of existing properties.

## ***Applicant Criteria***

### **Development Team Thresholds**

The applicant must have the development team in place and provide complete information and documentation on its members. At a minimum, the following team members must be identified:

- Owner (including all parties involved in the partnership or limited liability company, as applicable)
- Guarantor(s)
- Developer
- Development or Financing Consultants (if applicable)
- Architect
- General Contractor
- Construction Manager (if applicable)
- Management Agent
- Resident/Supportive Services Provider (if applicable)

The development team will be evaluated on their experience with and performance on comparable Projects, on past performance, and on their capacity to deliver the proposed Project and maintain long term viability and compliance.

At least one of the following key team members – Owner, Developer, or Development or Financing Consultant – must have prior experience completing and operating affordable housing Projects of a similar type and scope as the Project being proposed.

The applicant (owner, borrower, sponsor, developer, guarantor) must demonstrate the financial and workload capacity necessary to execute the proposed Project. The lead developer (and co-developer and/or development consultant, if applicable) must demonstrate a track record of Projects of similar size, scale, type, and complexity to the proposed Project and past performance indicates that the Project will deliver on time and on budget without additional concessions from DHCD before closing. The application demonstrates the willingness and capacity to take the predevelopment risk necessary to move the Project toward closing, parallel to DHCD's underwriting and approval process. The guarantor must have the financial capacity to ensure that the Project will deliver regardless of any potential delays or cost overruns.

#### ***Forms and Attachments***

An extensive series of forms and attachments must be completed and submitted for each member of the development team, including corporate documents, qualifications, resumes, references, organizational charts, workload descriptions, AIA documents, statements of real estate owned, and financial statements.

#### ***Clean Hands Certificate***

Core development team members will be required to submit a Certificate of Clean Hands and a Certificate of Good Standing issued by the District of Columbia.

#### ***Legal/Compliance Issues***

Within the past five years, no member of the development team acting as sponsor, developer, guarantor, or owner may have been debarred, removed as general partner or managing member, as applicable, had chronic past due accounts, substantial liens or judgments, chronic housing code violations, excessive tenant complaints, failed to receive IRS Form(s) 8609 for a completed Project, or consistently failed to provide information to DHCD about other loan applications or existing developments. Their history regarding substantial liens, defaults, judgments, foreclosures, and/or bankruptcies must be disclosed and found acceptable to DHCD.

Development team members must be in compliance with all existing and prior agreements with DHCD and/or the District of Columbia, including major health, safety and building codes. Development team members may not have had a tax credit award terminated by DHCD and the proposed property management company must not have received an unsatisfactory rating from DHCD or the U.S. Department of Housing and Urban Development (HUD) within the past three years.

#### ***Contract Affidavit***

All development team members must sign and submit a Contract Affidavit certifying that they:



(1) are not debarred from participation in any federal or District program; (2) do not have any unresolved default or noncompliance issues with the District of Columbia; and (3) meet the legal/compliance standards outlined above.

## ***Reports and Plans***

### **Appraisal**

Applicants must submit three valuations, which can be submitted together in a single report or as separate reports. A licensed appraiser must provide the following values:

- The “as-is” value;
- The “as-built” or “as-complete” value, assuming restricted rents; and
- The “as-built” or “as-complete and stabilized” value, assuming unrestricted, market-rate rents.

The “as is” appraisal must provide a value of the land and improvements in their current state. The “as built” appraisals must contain post-construction estimates of value (based on the Project concept as proposed to DHCD) under two sets of circumstances: (1) assuming rents restricted to the AMGI limits proposed to DHCD; and (2) assuming market-rate rents (in the event of foreclosure). If the property includes existing improvements that will be demolished as part of the development plan, the appraisal must take the cost of demolition into consideration for an “as vacant” land value.

Appraisals must have been completed no more than six months prior to the application deadline. For selected Projects, the appraisals must not be more than one year old at the time they are submitted to the Office of Program Monitoring (OPM) for compliance review, so an update may be required at that point. For all Projects, appraisals (or the most recent update) must be no more than 120 days old at the time of closing. Any updated reports or studies requested by DHCD post-selection must be procured and returned promptly, and applicants should budget for these costs now.

### **Market Study and Market Demand Analysis**

Applications must include a market study prepared by an independent professional who has experience with tax credit housing in the District of Columbia. Market studies should be performed following the requirements of IRC Section 42(m)(1)(A)(iii) and should be no more than six months old at the date of application submission. The market study must adhere to the current National Council of Housing Market Analysts (NCHMA) Model Content Standards. The Applicant must provide documentation that demonstrates sufficient market demand and need for the Project. If the Project is mixed-income and/or mixed-use and includes additional components beyond affordable/tax credit housing, the documentation must also demonstrate sufficient demand for all aspects of the overall Project.

### **Environmental Site and Physical Needs Assessments**

Applicants must include a completed Phase I Environmental Site Assessment, which must have been completed no more than two years prior to the application submission deadline. If the property contains existing improvements, the scope of the Phase I Assessment must include the identification of: (1) possible asbestos containing materials; and (2) potential mold hazards



(destructive testing not required).

If the property includes an existing structure that will not be deemed exempt due to age or usage, applicants also must submit a lead assessment. For selected Projects, the Phase I must not be more than one year old when they are submitted to OPM for compliance review, so an update may be required at that point. Any updated reports or studies requested by DHCD post-selection must be procured and returned promptly, and applicants should budget for these costs now.

If the Phase I identifies any potential environmental hazards, applicants must include a narrative plan to address the issues and a budget for remediation. If a Phase II has been completed, that document must also be provided.

For Projects that involve the rehabilitation of existing buildings, applicants also must provide a Building Evaluation Report, which is a preliminary engineering assessment of the buildings. In rehabilitating properties, developers may encounter unforeseen issues that can delay, increase the cost of, or even halt rehabilitation. To avoid this, DHCD requires that an engineer or other qualified professional complete an assessment of the property. A Capital/Physical Needs Assessment or a Property Conditions Needs Assessment will satisfy this requirement.

For Projects that involve the rehabilitation of existing buildings, applicants must submit the Housing Code Inspection report from the DCRA [SCOUT](#) database, or the equivalent from its successor agency, as applicable.

### **Architectural Plans and Cost Estimates**

Applications must submit final design schematics documents that reflect the general intent of the Project, generally delineate the proposed Project scope and contain the following:

- Final Schematic scope of work narrative, architectural plans and materials specifications sufficient to create a detailed cost estimate.
- Complete Form 215 detailed estimates of costs based on “take-offs” from those plans, completed and signed by a qualified professional such as an architect, general contractor, engineer or professional construction cost estimator. “Rule of thumb” square foot costs or other non-detailed cost estimates are not acceptable, and a Form 215 completed and signed by the developer will not be accepted.

## ***Compliance Criteria***

### **Green Building Design and Construction**

All applications must meet the following standards relative to green design and building, which apply to all Projects for which public financing constitutes 15 percent or more of Total Project Costs. Public financing includes the private equity raised through the syndication of LIHTCs. Per DHCD requirements, all Projects must implement the following green building requirements for new construction, substantial rehabilitation or moderate rehabilitation. Please see current Affordable Housing RFP for more detail.

**New construction** Projects with buildings with at least 50,000 square feet of Gross Floor Area must be certified by Enterprise Community Partners using the [2020 Enterprise Green Communities \(EGC\) Criteria](#), at the new, more stringent EGC Plus level. Projects also may

pursue a “substantially similar standard.” If a Project team would like to use another standard, it must request a waiver from DHCD and/or DCHFA, as applicable, prior to application submission in order to provide time to consult with DOEE. This includes Projects that wish to utilize a [LEED Zero Energy](#) standard. LEED is not a pre-approved standard, and use of LEED Zero Energy will require a commitment from the developer to modify the standard to count only on-site or in-District renewable energy when determining a Project’s source energy use.

**Rehabilitation** Projects with buildings of at least 50,000 square feet of Gross Floor Area must be certified by Enterprise Community Partners using the base-level 2020 Enterprise Green Communities Criteria. Projects also may pursue a “substantially similar standard.” Currently, certification with the U.S. Green Building Council using LEED for Homes and LEED for Homes Multifamily Midrise rating systems at the Silver level or above are pre-approved “substantially similar standards.” If a Project team would like to use another standard, it must request a waiver from DHCD and/or DCHFA, as applicable, in their submission. **In addition**, the Project must pursue at least a Level 1 Accelerated Savings Recognition Alternative Compliance Pathway (ACP) Option for compliance with DOEE’s Building Energy Performance Standards (BEPS). Compliance requirements for the Accelerated Savings Recognition Option and other guidance and forms will be available on the DOEE website: <https://doee.dc.gov/node/1537071>.

**New construction and rehabilitation Projects with buildings between 10,000 square feet and 49,999 square feet of Gross Floor Area** must be certified by Enterprise Community Partners using the base-level 2020 Enterprise Green Communities Criteria. Projects also may pursue a “substantially similar standard.” Currently, certification with the U.S. Green Building Council using LEED for Homes and LEED for Homes Multifamily Midrise rating systems at the Silver level or above are pre-approved “substantially similar standards.” If a Project team would like to use another standard, it must request a waiver from DHCD or DCHFA, as applicable, as part of its submission.

For Projects pursuing either base-level or Plus-level Enterprise Green Communities Criteria certification, Project teams must hold a Goal Setting and Integrated Design Charrette prior to application to consider the most cost-effective ways to integrate required green design elements. The findings of this charrette must be documented and submitted along with confirmation of Enterprise Green Communities Criteria registration on the online certification portal and an intended methods checklist. As a condition precedent to tax credit/loan closing, Project teams must submit proof of Enterprise Green Communities Step 1 Pre-Build certification. Once construction is complete, Projects must demonstrate that they have achieved Step 2 Post-Build certification.

Projects pursuing LEED certification (LEED for Homes, LEED for Homes Multifamily Midrise, LEED Zero Energy) must be certified by the US Green Building Council. At the time of submission, upon consultation with your team’s design professionals, the appropriate completed LEED checklist must be submitted, demonstrating compliance with all prerequisites and sufficient points to achieve LEED Silver or above. Please note that submission of evidence of an integrated design charrette is not mandatory for LEED projects, but is strongly encouraged. If selected for financing, as a condition precedent to loan closing, project teams must be registered with LEED Online and add the DC Government account ([green.building@dc.gov](mailto:green.building@dc.gov)) to the LEED Online project team. Once construction is complete, projects must demonstrate that they have

achieved the appropriate certification.

All Projects must either include solar panels, or qualify as a Solar Ready Building as defined by the US Department of Energy at <https://www.nrel.gov/docs/fy10osti/46078.pdf>. Projects not required to utilize EGC+ can request a waiver to this provision. Projects should include specifications for the system in the schematic plans, and any related funding sources should be evident in the Form 202. Technical assistance for complying with this section is available from the [District of Columbia Sustainable Energy Utility \(DCSEU\)](#). Please refer to the Affordable Housing RFP for additional guidance on meeting this requirement.

### **Relocation and Anti-Displacement Strategy**

For existing and occupied buildings/properties that result in the temporary or permanent displacement of current occupants, including commercial tenants, the applicant must submit a Relocation and Anti- Displacement Strategy. This strategy (due with the application) provides the groundwork for the Relocation and Anti-Displacement Plan (due before the issuance of a Letter of Commitment for financing). All Projects financed with LIHTCs in the District of Columbia will be held to the standards of the Uniform Relocation Act and the District’s Rental Housing Act.

Instances where a strategy and plan are required include the following, regardless of funding source:

- tenants will be required to move to facilitate the building’s rehabilitation, even if they are moved to other units within the same building or complex;
- demolition of existing dwelling or commercial units or buildings that are occupied at the time of acquisition or at the time the applicant executes a legal instrument that demonstrates site control; or
- tenants will be displaced because the proposed rents are not affordable.

## Evaluation Criteria

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All Projects that apply for 9% Tax Credits and meet the Threshold Eligibility Requirements will be competitively evaluated and rated based on pre-determined selection criteria, established in accordance with federal law and the District’s housing priorities and needs. The Selection Criteria is defined in this QAP and is further clarified in the Affordable Housing RFP.

Evaluation criteria will be grouped into the following categories with maximum possible point totals, such that maximum preference per sub-category may be achieved without meeting each criteria of the category.

<b>EVALUATION CRITERIA</b>	
	<b>Potential Weight</b>
<b>Project Readiness and Past Performance</b>	<b>-25</b>
Error-Free Submission	
Readiness to Proceed	
Compliance with DHCD Cost and Funding Guidelines	
Past Performance	
<b>Inclusive and Equitable Housing</b>	<b>25</b>
Permanent Supportive Housing	
Family-Oriented Units	
Programs to Address Additional Barriers to Housing	
Housing for Seniors and People with Disabilities	
Provision of Wealth-Building Opportunities	
Income Levels Served	
Section 8 and Public Housing Waiting Lists	
<b>Place-Based Priorities</b>	<b>25</b>
Affordable Housing Opportunities Across Planning Areas	
Proximity to Transit and Neighborhood Amenities	
Preference for Projects with District Land	
<b>Maximizing the Impact of DHCD Resources</b>	<b>25</b>
TOPA, DOPA, Preservation Fund, and/or SAFI Preference	
Risk of Loss of Affordability in the Near Term (NOAH or Covenanted)	
Mixed-Income	
Affordability Period Restriction	
Non-Profit Participation and Right of First Refusal	
Maximizing Density	
Leverage	
<b>Innovative and Community-Oriented Features or Programming</b>	<b>25</b>
Resilient Buildings and Innovative Design	

Resident Services and Community-Oriented Amenities	
Workforce Development and Certified Business Enterprise Participation	

## ***Project Readiness and Past Performance***

### **Error-Free Submission**

Proposals with inconsistent information between the Project narrative, application, and back-up documentation including the Form 202 will be negatively impacted. Projects with assumptions outside of the DHCD guidelines as stated in the Affordable Housing RFP or other published guidance will also be negatively impacted. Projects that have proposed uses that are associated with dedicated third-party funding sources must include those sources in the Form 202. For example, all viable green financing/funding sources must be included.

### **Readiness to Proceed**

Projects with a closing timeline greater than 12 months from being selected for further underwriting by DHCD, based on application timeline, narrative, and supporting documentation, will be negatively impacted.

### **Compliance with DHCD Cost and Funding Guidelines**

Projects that do not follow DHCD's Underwriting Guidelines will be negatively impacted. Underwriting Guidelines include construction cost, soft cost, and operating cost guidelines that are updated periodically and will be specified in the Affordable Housing RFP. The purpose of these requirements is to ensure efficient use of DHCD funds and thus enable DHCD to serve more households with its finite amount of subsidy funds. A number of these guidelines are firm requirements and cannot be waived. In other instances, Projects may be outside a certain guideline but their application will be negatively impacted.

### **Past Performance**

The past performance of existing Projects in the development team's portfolio will be critically evaluated with consideration for any legal/noncompliance matters. Applications for which members of the development team, as applicable, participated in prior Projects that were delayed, had a U.S. Department of Labor (DOL) wage rate complaint and subsequent investigation, and/or did not submit annual reporting to DHCD's Portfolio and Asset Management Division (PAMD) will be negatively impacted. Development team is defined to include the Sponsor/Developer/Owner, Management Agent, General Contractor, other named team members, managing and non-managing members of the Ownership Entity and any related parties/affiliates.

## ***Inclusive and Equitable Housing***

### **Permanent Supportive Housing**

Aside from the 5% PSH Threshold Eligibility Requirement for all Production Projects, Projects also may earn preference by creating additional PSH units beyond the minimum number required. These preferences are available to both production and preservation Projects. Maximum preference will be awarded to Projects that set aside at least 20% of the units as PSH units.

The scoring preference for PSH units is guided by Chapter 4 of the Interagency Council on Homelessness' (ICH) 2021-2025 strategic plan, titled Homeward DC 2.0, available here: <https://ich.dc.gov/page/homeward-dc-20-ich-strategic-plan-fy2021-fy2025>

### **Family-Oriented Units**

Maximum preference will be awarded to Projects in which at least 30% of the affordable units have three or more bedrooms. Partial weight may be awarded to Projects that include a certain percentage of units that have two or more bedrooms.

### **Programs to Address Additional Barriers to Housing**

Preference will be awarded to Projects that include programming for underserved populations who face barriers to securing affordable housing (including returning citizens, households of unknown immigration status, residents with developmental disabilities, residents with diverse language needs, etc.).

### **Housing for Seniors and People with Disabilities**

In alignment with the Age-Friendly DC Task Force recommendations, preference will be awarded for Projects that include units designed and reserved for seniors (55+) and/or people with disabilities, including assisted living and intergenerational housing units. Maximum preference will be awarded to Projects for seniors (55+) in which all units meet the either the Uniform Federal Accessibility Standards (UFAS) or the American National Standards Institute (ANSI) Type A accessibility standards. Type A units are adaptable units that can allow seniors and others with mobility issues to age in place. Type A units must meet the requirements as defined in Chapter 11 of the 2013 District of Columbia Building Code:

<https://codes.iccsafe.org/content/chapter/9182/>.

### **Provision of Wealth-Building Opportunities and Advancing Racial Equity**

Preference will be awarded for Projects that incorporate wealth-building opportunities for Project owners or development team participants who are designated as a Disadvantaged Business Enterprise (DBE) or Resident-Owned Businesses (ROB) by the D.C. Department of Small and Local Business Development (DSLBD), or who are led or controlled by individuals designated as socially disadvantaged under the Small Business Administration (SBA) definition.

Preference will also be awarded for Projects emphasizing wealth-building opportunities for current or future residents, either through homeownership opportunities or resident services and programming.

### **Income Levels Served**

This measure evaluates the weighted average of the income levels served for units proposed to be funded by DHCD, with a preference for Projects serving lower incomes. This criterion applies to both preservation and production Projects. Maximum preference will be awarded to Projects that target a weighted average Area Median Gross Income (AMGI) less than or equal to 40%. For example, a Project with an equal mix of 30% AMGI and 50% AMGI units funded by DHCD.

### **Section 8 and Public Housing Waiting List**

Preference will be given for Projects in which leasing preference is given to households on the public housing or Section 8 waiting list maintained by the DC Housing Authority (DCHA).

## ***Place-Based Priorities***

### **Affordable Housing Opportunities Across Planning Areas**

This criteria awards preference for Projects based on location. DHCD seeks to create more affordable housing across Planning Areas, especially in neighborhoods with characteristics such as low-crime, low-poverty, and access to high quality schools and jobs. Another goal of this preference is to disperse the District's affordable housing supply more equitably across neighborhoods and Wards, and to counter the systemically racist housing policy of the past which has concentrated affordable housing in neighborhoods east of Rock Creek Park, particularly in Wards 7 and 8. Preference will be assigned to each Planning Area identified in the District's October 2019 Housing Equity Report that charts a pathway to achieve the goal of 12,000 new affordable units by 2025 in a more equitable and inclusive manner. Maximum preference will be awarded to those areas of the city that have the largest deficit of existing affordable housing. Applicants should use the interactive map provided in the Online Application System through the Affordable Housing RFP to determine in which Planning Area their Project is located.

### **Proximity to Transit and Neighborhood Amenities**

Preference will be given to Projects that are located within ¼ - ½ mile of a Metrorail station or a DC Streetcar stop, and/or neighborhood amenities such as full-service grocery stores, public libraries, public or charter schools, aging services, recreation facilities, or primary care providers. Maximum preference will be awarded for Projects that are closer to these resources and neighborhood amenities.

### **Preference for Projects with District Land**

Projects will receive maximum preference if: (1) the Project is part of the redevelopment of a site formerly owned by the District of Columbia; (2) the site was awarded to the applicant through a competitive disposition process; and (3) the Project is being developed on the site that was awarded. This includes dispositions managed by DHCD's Property Acquisition and Disposition Division (PADD), the Deputy Mayor for Planning and Economic Development (DMPED), and the DCHA, among others.

## ***Maximizing the Impact of DHCD Resources***



### **TOPA, DOPA, Preservation Fund, and/or SAFI Preference**

Projects proposed by or in partnership with tenant groups that exercised their TOPA rights to purchase their building will receive preference under this criterion, as will Projects acquired through the District Opportunity to Purchase Act (DOPA); those with existing DHCD loans or programs including the Site Acquisition Funding Initiative (SAFI) and the Housing Preservation Fund; and projects acquired through foreclosure or bankruptcy, for which a developer can demonstrate clear title, and that they have negotiated in good faith with a tenant organization, having signed either a development agreement or a memorandum of understanding memorializing their commitments. If the proposed development increases the number of units originally acquired by the tenants or their assignee, partial weight may be awarded.

### **Risk of Loss of Affordability in the Near Term (NOAH or Covenanted)**

Maximum preference will be awarded to preservation Projects that are either considered Naturally Occurring Affordable Housing (NOAH) and not currently encumbered by an affordability covenant, or those with existing affordability covenants that will expire within two to five years from the due date of the application. Maximum preference will be awarded for Projects within two years of expiration of an existing covenant, or those Projects without an existing affordability covenant.

### **Mixed-Income**

Maximum preference will be awarded for Projects that include market-rate units and affordable units serving a variety of household income levels in the same Project as defined below. The affordable and market rate units must be equitably distributed within the development in order to comply with federal fair housing regulations and the mix must be achieved within a single building with a shared entrance.

1. Inclusion of market-rate units: Preference will be awarded to Projects that integrate affordable units with market rate units within the same Project. For the purposes of this section, market rate units developed in a separate condominium or tax lot structure will count as created within the same Project. To receive preference, the percent of market rate units must be between 20% to 80% of the total units, and the affordable and market rate units must be equitably distributed within the development in order to comply with federal fair housing rules.

The mixed-income preference only relates to a mix of affordable and market-rate (unrestricted) units and not a mix of affordable units serving varying AMGI levels. For example, a 100% affordable building that is part of a larger site mixed-income redevelopment would not qualify for this preference.

2. Providing units for a range of AMGI levels: Preference will be awarded to Projects that propose a mix of affordable units serving varying AMGI levels – from 30% AMGI to market rate units - within the same Project.

### **Affordability Period Restriction**

Applications documenting that the owner will maintain the low-income units in compliance for



a designated period beyond the standard 25-year extended use period after the initial 15-year Compliance Period will be awarded preference. Maximum preference will be awarded to Projects that commit to affordability in perpetuity.

### **Non-Profit Participation and Right of First Refusal**

Evaluation of this criteria will be completed based on the applicant's description of the Year 15 plan in the Project narrative component of the online application. Preference will only be awarded for Projects in which a Qualified Non-profit Organization materially participates (that is, has an ownership interest and decision-making role) in the development and operation of the Project. Preference will be awarded for Projects in which a qualified non-profit organization is the managing member of the general partner, the qualified non-profit organization holds an ownership interest of 51 percent or more of the general partner or managing member, as applicable, of the Ownership Entity, and will have a right of first refusal to purchase the Project at the end of the Compliance Period based on IRC Section 42(i)(7), as may be amended from time to time. All LIHTC Projects in which a Qualified Non-Profit organization is managing member of the general partner or managing member, as applicable, of the Ownership Entity, are required to apply for the Tax Relief Program. The real property tax and recordation exemptions offered through this program should be reflected in the Form 202 for LIHTC Projects receiving maximum preference in this category.

To obtain maximum preference under this category, the applicant must sign or intend to sign a right of first refusal Agreement between the owner, non-managing members and Qualified Non-Profit organization before the Project's financial closing. Additionally, the non-managing members shall certify to DHCD that they have not sought to undermine the exercise of a right of first refusal or option to purchase in prior transactions. Examples of undermining include but are not limited to, engaging in litigation or otherwise seeking to prevent a Qualified Non-profit Organization from exercising their right of first refusal or option to purchase a Project without just cause, or seeking to remove a general partner or managing member without clear evidence of fraud or mismanagement of a Project. The right of first refusal must meet the Threshold Eligibility Requirements in the Project Criteria section, and will be recorded with the land records as an attachment to the Indenture of Restrictive Covenants. All rights of first refusal granted to Qualified Non-profit Organizations under this preference are subject to the requirements of the Tenant Opportunity to Purchase Act (TOPA) and the District's Opportunity to Purchase Amendment Act of 2008, DC Law 17-286 (DC Official Code Section 42-3404.31 *et seq.*), as either law may be amended from time to time.

### **Maximizing Density**

Preference will be awarded for Projects that maximize the allowable density on the Project site under current zoning laws. Maximum preference will be awarded for Projects that increase Project density through a Planned Unit Development (PUD), Map Amendment, or some other official mechanism.

### **Leverage**

This criteria will measure the extent to which the federal Tax Credit Allocation Amount and additional loan funds (if requested) are leveraged with other public and private resources by calculating the percentage of the total development cost that is funded by DHCD. To maximize preference on this criterion, applicants should pursue alternative financing sources that reduce DHCD's investment in the Project, such as private grants or soft debt, PACE financing, Housing

Assistance Payment contracts, property tax abatements/exemptions, etc. In mixed income buildings, applicants may use surplus cash flow from the market rate units to cross subsidize the affordable units and improve their leverage ratio. This category will also incentivize the containment of variable soft costs to reasonable amounts.

## ***Innovative and Community-Oriented Features or Programming***

### **Resilient Buildings and Innovative Design**

Preference will be awarded Projects that exceed the minimum Green Building Design and Construction Threshold Requirements, and commit to achieving one of the specific certifications defined in the Affordable Housing RFP. . Any Project claiming this preference category must demonstrate the capacity and experience to achieve certification, and to incorporate the innovative features specified. The architectural plans and Project budgets (development and operating) submitted in the application must reflect the commitment to certification and the features described. Maximum preference will be awarded to applicants that design and construct their Project to achieve Enterprise Green Communities Certification Plus (EGC+) including Criterion 5.4: Achieving Zero Energy.

### **Resident Services and Community-Oriented Amenities**

Preference will be awarded to Projects proposing high-quality, comprehensive property-wide resident services. Such services are in addition to the PSH case management services that serve a limited resident population with more intensive needs. Maximum preference will be awarded to Projects that will provide specific, targeted resident services that tie into proposed Project amenities, for example highspeed internet, playgrounds, or community gardens or healthy food provision on-site.

### **Workforce Development and Certified Business Enterprise Participation**

Preference will be awarded to Projects that submit detailed plans for apprenticeship programs that facilitate the placement of D.C. residents in employment opportunities at the Project. The commitment and strategy to develop and implement a local apprenticeship program shall be in accordance with D.C. Official Code §§ 32-1401, et seq. Preference will also be available to Projects that commit to Certified Business Enterprise (CBE) participation beyond the required 35%. Maximum preference will be awarded to Projects that commit to both apprenticeship programs, and CBE participation above the statutory minimum requirements.

## ***Other Required Selection Criteria***

DHCD also will consider aspects of a Project that relate to eventual tenant homeownership and the historic nature of the Project, but DHCD does not attribute specific preference to these categories.

## **Underwriting Guidelines**

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Projects that have met the Threshold Eligibility Requirements that have been rated and ranked against the selection criteria also will be evaluated to determine the LIHTC amount that is needed for the Project's feasibility and viability. DHCD will calculate the maximum LIHTC for which Projects are eligible and the minimum required LIHTC needed for feasibility and viability.

Sponsor/Developers will be required to file an updated development budget, operating pro forma, and tax credit calculation worksheet at each stage of the tax credit process. In addition, the Sponsor/Developer must supply all information and supporting documentation requested by DHCD for the purposes of evaluating: (1) the development team capacity; (2) the Project's financial and economic feasibility; and (3) the Project's ability to comply with all applicable federal and local regulations.

Projects are subject to the specific underwriting guidelines outlined in this QAP, listed below, and as supplemented by those items identified in the Affordable Housing RFP and, for 4% only project, DCHFA underwriting guidelines, which may include, but are not limited to:

- Reserve requirements
- Limitations on costs
- Development/consultant fees
- General contractor fees
- Income/expense/vacancy rates
- Debt service requirements

Applicants must review both documents and comply with specified guidelines for LIHTC Projects.

DHCD's underwriting guidelines include the following: (1) subsidy layering review; and (2) basis boost.

### **Subsidy Layering Review**

For Projects that combine HUD development and/or operating assistance with tax credits, DHCD or DCHFA will complete a subsidy layering review to ensure that the Ownership Entity does not receive excessive government subsidies. DHCD or DCHFA will:

- Undertake the subsidy layering review for each Project after completion of underwriting, if applicable.
- Complete the subsidy layering review for applicable Projects after the Sponsor/Developer submits relevant documentation for review at carryover. This information includes the results of DHCD or DCHFA's underwriting analysis, the Sponsor/Developer's proposed development costs, and information concerning any

Project syndication.

- Complete a second subsidy layering review when the IRS Form(s) 8609 is issued for the Project.

DHCD and DCHFA reserve the right, without amending this QAP, to amend the subsidy layering procedures as necessary to comply with changes in applicable federal law or regulations, and HUD guidelines.

### **Basis Boost**

Federal law permits jurisdictions to calculate and reserve a greater amount of LIHTC than normally calculated on the eligible basis for Projects in certain areas. These areas are known as Qualified Census Tracts (QCT) and Difficult Development Areas (DDA).

- QCTs are areas in which 50% of the population has incomes of less than 60% of the AMGI or that have a poverty rate of at least 25%. A listing of QCTs for the District is available from the HUD website at [www.huduser.gov](http://www.huduser.gov).
- DDAs are those areas designated by HUD because of high construction, land and utility costs relative to the AMGI. The eligible basis for Projects in these areas may be increased by up to 30%. A higher LIHTC may be calculated and reserved where federal law permits and where the feasibility analysis indicates the need for the additional LIHTC.

As authorized by and to the extent permitted by IRC Section 42(d)(5)(B)(v), enacted by The Housing and Economic Recovery Act of 2008, DHCD, in its sole discretion, may increase the eligible basis of Projects by up to 30% (Department's Basis Boost), if it determines that the Project or a building in the Project needs the basis boost to be financially feasible. The Department's Basis Boost is only available to 9% LIHTC Projects.

DHCD has identified the following attributes that could potentially qualify a Project for the Department's Basis Boost:

- Projects located in a Planning Area that is currently below the recommended minimum of 15 percent dedicated affordable housing as defined by the Housing Framework for Equity and Growth referenced in this QAP; or
- Projects located in a census tract that meets the following demographics according to the most recent FFIEC Census Report (<http://www.ffiec.gov/census/>):
  - Less than 5% below poverty level (see Income)
  - Designated Middle or Upper Income level (see Demographics); or
- Projects that achieve maximum preference in both of the following prioritization scoring categories:
  - mixed-income; and
  - family-oriented units.

Projects receiving a 30% Basis Boost because of location in QCT or DDA are not eligible to receive the Department's Basis Boost.

## Monitoring for Compliance

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DHCD will monitor each low-income housing Project to make sure that Project owners comply with all federal and District laws, regulations, and provisions applicable to a Project receiving LIHTCs.

DHCD has established compliance monitoring procedures consistent with the requirements of §1.42-5 of the Income Tax Regulations, as amended, which include provisions for physical inspections of low-income housing Projects, review of low-income certifications, the documentation supporting the certifications, and the rent records for the tenants occupying low-income housing units, record-keeping, record retention, and notification of non-compliance. These compliance monitoring procedures are provided in detail in the DHCD LIHTC Compliance and Monitoring Reference Guide, as may be updated from time to time, and can be found at [dhcd.dc.gov/service/project-monitoring](https://dhcd.dc.gov/service/project-monitoring).

Project owners electing the minimum set-aside for Income Averaging must submit an owner-generated plan outlining their proposed policies and procedures for ensuring compliance with Income Averaging requirements. This submission will be required during the underwriting process before a conditional commitment is issued.

The Compliance Period is for 15 years beginning with the first taxable year of the building's credit period, and is extended over at least an additional 25 year period by the Land Use Restrictive Covenants, for a total of at least 40 years.

### Fair Housing & Accessibility

Section 504 of the Rehabilitation Act of 1973 (Section 504) provides guidelines for the new construction or rehabilitation of housing units that should be accessible to persons with disabilities. Section 504 standards are applied by DHCD to all development Projects, including LIHTC Projects. All Projects will be expected to comply with Affirmative Marketing practices as well as all applicable accessibility standards in addition to Section 504, such as the Americans with Disabilities Act (ADA) and the Fair Housing Amendments Act (FHAA).

### Davis Bacon

If a LIHTC Project is assisted with other federal or local funding sources or subsidies triggering the Davis-Bacon Act of 1931 (Davis Bacon) and Davis Bacon Related Acts (DBRA), then prevailing wage rates will apply to the LIHTC-assisted Project. This may include federal sources such as HOME, CDBG, HUD 542(c) Risk Share, and/or an Annual Contributions Contract (ACC). Additionally, local funding sources such the Housing Production Trust Fund (HPTF) and the Local Rent Supplement Program (LRSP) also trigger prevailing wages.

### Section 3

Similar to the application of Davis Bacon stated above, Section 3 of the Housing and Urban Development Act of 1968 (Section 3) will apply to LIHTC-assisted Projects with funds that may trigger its application. HUD and DHCD funds will require the applicability of Section 3 for housing construction, housing rehabilitation, and public construction Projects, and will apply to

the whole Project.

## Environmental Reviews

Environmental Reviews (ER) subject to NEPA will be performed by DHCD for Projects utilizing both LIHTCs and federal funds, such as Risk Share, ACC, HOME, and/or CDBG. Projects utilizing both LIHTCs and HPTF or the National Housing Trust Fund (HTF) are not subject to the NEPA ER process, but will still undergo an ER. LIHTC-only Projects do not require SHPO concurrence.

Additional local compliance requirements may apply to LIHTC Projects. Applicants should refer to the Compliance and Monitoring Reference Guide referenced above.

## Violence Against Women Act (VAWA)

Title VI of the Violence Against Women Reauthorization Act of 2013 (“Act”), Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking, expanded the applicability of the Act to the LIHTC program. VAWA protects both child and adult victims of domestic violence, dating violence, sexual assault and stalking. All LIHTC owners and managers shall comply with the requirements of this Act and shall use the applicable VAWA forms as amended from time to time including but not limited to the HUD-5380 Notice of Occupancy Rights under the Violence Against Women Act, HUD-5381 Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, HUD-5382 Certification of Domestic Violence, Dating Violence or Stalking, and Alternate Documentation, HUD-5383 Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and HUD-91067 VAWA Lease Addendum.

## Recordkeeping and Retention

For each qualified low-income building in the Project, Project owners must maintain records that provide specific information for each year of the Compliance Period. The failure to maintain these records or otherwise comply with requirements in the DHCD LIHTC Compliance and Monitoring Reference Guide may result in the issuance of IRS Form(s) 8823 and the eventual recapture of tax credits. All applicants are urged to review the LIHTC Compliance and Monitoring Reference Guide and require that Project property managers have a thorough knowledge of the requirements under IRC Section 42 and the LIHTC Compliance and Monitoring Reference Guide.

## Notification of Noncompliance

DHCD will promptly notify Project owners in writing if its monitoring reveals that the Project is in noncompliance. This notice will provide a cure period of up to 90 days from the notice date for the owner to bring the Project into compliance. Failure to cure a condition of noncompliance may result in recapture of the LIHTC. All incidents of noncompliance must be reported to the IRS on Form(s) 8823 notwithstanding the resolution of compliance issues. For good cause, DHCD, in its sole discretion, may grant an extension of the cure period for up to an additional six months.



## Definitions

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The following capitalized terms shall have the meanings below unless context clearly requires a different meaning.

**Affiliate:** A corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other person, and specifically shall include parent companies or subsidiaries.

**Applicable Fraction:** The fraction used to determine the Qualified Basis of the qualified low-income building, which is the smaller of the unit fraction or the floor space fraction, as defined more fully in IRC Section 42(c)(1).

**Applicable Percentage:** The percentage multiplied by the Project's qualified basis to determine the annual tax credit available to the ownership entity for each year of the Tax Credit period and as more fully described in IRC Section 42(b).

**Application or Application Package:** Those forms and instructions prepared by DHCD to make a determination to allocate tax credits. Developers are required to use the forms in the application package. The Application must include all information required by the QAP and as may be subsequently required by DHCD.

**Area Median Gross Income (AMGI or AMI):** The most current tenant income requirements published by HUD pursuant to the qualified low-income housing Project requirements of IRC Section 42(g). Depending on financing sources, the Project may also be required to conform with affordable housing program income limits published for other local and federal programs, with any notable differences described in the Affordable Housing RFP. AMGI and AMI are encompassed by the broader definition of Median Family Income (MFI), which is a generic term used in the Affordable Housing RFP to designate rent and income limits that are typically based on HUD Median Family Income (HMFI) limits. .

**Carryover Agreement and Allocation:** An allocation of current year Tax Credit Reservations by DHCD pursuant to IRC Section 42(h)(1)(E) and Treasury Regulations Section 1.42-6.

**Code or IRC:** The Internal Revenue Code of 1986, as amended, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued there under by the U.S. Department of the Treasury or the Internal Revenue Service relating to the Low-Income Housing Tax Credit Program authorized by IRC Section 42. These documents are incorporated in the QAP by reference. A copy of the Internal Revenue Code and Treasury regulations and related information relating to this program are found in the District of Columbia Public Library and are available for review by the public.

**Compliance Period (as defined in IRC Section 42(i)(1)):** Regarding any building, the period of 15 consecutive taxable years beginning with the first taxable year of the Tax Credit Period.

**Control (including the terms Controlling, Controlled by, under common Control with, or some variation or combination of all three):** The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person or Affiliate thereof, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50 percent of the general partner interest in a limited partnership, or designation as a managing general partner or the managing member of a limited liability company.

**Consolidated Request for Proposals for Affordable Housing Projects (Affordable Housing RFP):** The competitive procurement vehicle issued by DHCD on a periodic basis that identifies available resources for affordable housing development, including 9% Tax Credits. The Affordable Housing RFP solicits proposals from qualified applicants and provides any desired clarifications on the threshold eligibility requirements and selection criteria. All Affordable Housing RFPs issued by DHCD are catalogued and available on dhcd.dc.gov.

**Developer or Sponsor/Developer:** The party acting as agent for the eventual owner or taxpayer benefiting from an award of a Tax Credit Reservation.

- That party and any of its successors in interest that will be bound by the representations made in the application or documents executed in applying for or accepting the allocation of LIHTC.
- That party or its successors that shall be obligated to carry out the commitments made to DHCD by the Sponsor on its own behalf or on behalf of other Persons or Affiliates.

**Difficult Development Area (DDA):** Any area that is so designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to Area Median Gross Income.

**Eligible Basis:** Regarding a building within a Project, the building's eligible basis at the close of the first taxable year of the Tax Credit Period and as further defined in IRC Section 42(d).

**Forward Reservation:** has the same meaning as described in IRC Section 42(h)(1)(C).

**Gross Floor Area:** The combined floor area of all structures that share building systems, or have at least one common energy or water meter, less any area available for parking as defined by the ENERGY STAR Portfolio Manager benchmarking tool.

**High Risk:** Projects that involve adaptive re-use or require extraordinarily challenging substantial rehabilitation or provide more than 50% of units for tenants with annual income of 50% or less of the Area Median Gross Income.

**HUD:** The U.S. Department of Housing and Urban Development, or its successor.

**IRS:** The Internal Revenue Service, or its successor.

**Land Use Restrictive Covenants a/k/a District of Columbia Department of Housing and Community Development Indenture of Restrictive Covenants for Low-Income Housing**



**Tax Credits (Restrictive Covenants):** An agreement between DHCD and the Ownership Entity and all of its successors in interest where the parties agree that the Project will be an affordable housing Project for the length of the Compliance Period plus the extended use period elected by the Ownership Entity and upon which the award of tax credits was in part based. The Restrictive Covenants will contain language that must encumber the land where the Project is located for the life of the agreement. The Restrictive Covenants must conform to the requirements of IRC Section 42(h) and this QAP.

**Low-Income Unit:** Any residential rental unit if such unit is rent-restricted and the occupant's income meets the limitations applicable as required for a qualified low-income housing Project.

**Management Agent:** The property manager for the Project.

**Net New Units:** Any unit produced or preserved that is not currently subject to an affordable housing covenant.

**Online Application System:** DHCD's internet-based system through which applicants submit applications for 9 percent Tax Credits.

**Ownership Entity:** Any Person and any Affiliate of such Person that:

- submits an Application to DHCD requesting a Tax Credit Reservation pursuant to this QAP;
- receives a Tax Credit Reservation, Carryover Agreement or IRS Form(s) 8609 Tax Credit Allocation;
- is the successor in interest to the Sponsor/Developer who owns or intends to own and develop a Project or expects to acquire Control of a Project consistent with control documents provided by the Ownership Entity to DHCD as part of the Application.

**Permanent Supportive Housing (PSH):** Supportive housing for an unrestricted period of time for individuals and families who were once homeless and continue to be at imminent risk of homelessness, including persons with disabilities as defined in 24 Code of Federal Regulations 582.5 for whom self-sufficient living may be unlikely and whose care can be supported through public funds. (DC Official Code Section 4-751.01-28)

**Preservation:** A Project that meets the requirements of "Preservation" described under the Threshold Eligibility Requirements.

**Production:** A Project that meets the requirements of "Production" described under the Threshold Eligibility Requirements.

**Project:** A low-income rental housing property the Sponsor/Developer of which represents that it is or will be a qualified low-income housing Project within the meaning of IRC Section 42(g). With regard to this definition, the Project is that property that is the basis for the application.

**Property:** The real estate and all improvements thereon, which are the subject of the Application, including all items of personal property affixed or related thereto, whether

currently existing or proposed to be built thereon in connection with the application.

**Qualified Allocation Plan (QAP):** A plan to select and award tax credits to qualified recipients, as described under IRC Section 42(m)(1)(B).

**Qualified Basis:** Regarding a building within a Project, the building's eligible basis multiplied by the applicable fraction, within the meaning of IRC Section 42(c)(1).

**Qualified Census Tract:** Any census tract that is so designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the Area Median Gross Income for such year or which has a poverty rate of at least 25percent.

**Qualified Non-profit Organization or Non-profit:** An organization that: (1) is described in IRC Section 501(c) (3) or (4); (2) is exempt from federal income taxation under IRC Section 501(a); (3) is not affiliated with or controlled by a for profit organization; (4) includes as one of its exempt purposes the fostering of low-income housing within the meaning of IRC Section 42(h)(5)(C); (5) is allowed by law or otherwise to hold and develop property; and (6) meets any additional requirements as described in the QAP and/or Affordable Housing RFP.

**Recovered Tax Credits:** Either tax credits previously awarded to a Project or Projects that cannot use all the tax credits awarded or tax credits from Projects that cannot be placed in service by the Sponsor/Developer/Ownership Entity.

**Reservation or Reservation Letter:** A conditional commitment of LIHTC, which, therefore, does not meet the definition of a binding allocation as stated in IRC Section 42.

**Selection Criteria:** See the heading "Selection Criteria" in this QAP.

**State Ceiling:** The limitation imposed by IRC Section 42(h) on the aggregate amount of tax credit allocations that may be made by DHCD during any calendar year, as determined from time to time by DHCD in accordance with IRC Section 42(h)(3).

**Tax Credit:** The LIHTC issued pursuant to the program, IRC Section 42. Tax credits are determined under IRC Section 42(a) for any taxable year in the Tax Credit Period equal to the amount of the applicable percentage of the qualified basis for each qualified low-income building.

**Tax Credit Allocation Amount:** Regarding a Project or a building within a Project, the amount of Tax Credit DHCD allocates to a Project and determines to be necessary for the Project's financial feasibility and its viability as a qualified low-income housing Project throughout the Compliance Period.

**Tax Credit Period:** Regarding a building within a Project, the period of 10 taxable years beginning with the taxable year the building is placed in service or, at the election of the Ownership Entity the succeeding taxable year, as more fully defined in IRC Section 42(f)(1).

**Threshold Eligibility Requirements:** See the heading “Threshold Eligibility Requirements” in this QAP.

**TOPA:** The Tenant Opportunity to Purchase Act of 1980, DC Law 3-86 (DC Official Code Section 42-3404.01 *et seq.*)

**Total Project Cost:** The total costs reflected in the application.

**Unallocated or Recovered Tax Credits:** Tax Credits that are not awarded by DHCD during its most recent round of allocation or are returned to DHCD during the current year. These Tax Credits are eligible for redistribution in accordance with DHCD rules or may be carried forward to the next year’s allocation cycle.

## **Response to Public Comments**

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On August 3, 2021, DHCD publicly released its draft 2021 Qualified Allocation Plan for the Low Income Housing Tax Credit Program after the District Register Notice Vol.68 No.31, a Solicitation of Public Comment and Notice of Public Hearing was published. The Comment period closed on August 31, 2021. The public hearing was held virtually on August 25, 2021 (recording available here: <https://www.youtube.com/watch?v=c5VHWDFb5-U>). In this process, DHCD received a total of 83 responses covering a range of topics from private citizens, representatives both of non-profit and for-profit entities across the development community, as well as one sister agency. The Department has thoroughly reviewed all comments and a summary of all comments received and DHCD's responses are provided below.

For all selection criteria, further clarity and guidance related to requirements and allocation of points will be provided in the most current Consolidated Request for Proposals for Affordable Housing Projects (Affordable Housing RFP or RFP) through which the 9% Tax Credits are awarded. Questions about the QAP in relation to the Affordable Housing RFP can be submitted through the online Q&A portal for the RFP and will be reviewed and responded to at that time.

DHCD received two comments requesting a redline against the prior QAP. A redline showing changes between 2019 and 2021 is published on the DHCD website.

### **1. Priority classifications**

DHCD received several comments in support of the priority evaluation structure; specifically, that the first Priority Classification targets development in the Rock Creek West and Near Northwest Planning Areas, and that the second Priority Classification focuses on providing units targeted to extremely low-income households in the following Planning Areas: Rock Creek East, Upper Northeast, Mid-City, Central Washington, Lower Anacostia Waterfront and Near Southwest, and Capitol Hill. Note that the Capitol Hill Planning Area has been moved from the second Priority Classification to the first Priority Classification.

These commenters, however, also expressed concern that Priority Classifications #1 and #2 prioritize the production of net new units over the preservation of existing buildings, and suggested that preservation projects be included in Priority Classification #1 as well as in the Planning Areas listed above that are targeted in Priority Classification #2. As written, Priority Classification #1 does include both preservation and production projects. DHCD understands the objection raised regarding Priority Classification #2, but considers the priority evaluation stage as an opportunity to focus on projects that will create net new affordable units in specific Planning Areas to meet the District's goals of creating 12,000 net new affordable housing units by 2025. In addition, the definition of Net New Units encompasses any unrestricted unit, including any Naturally Occurring Affordable Housing (NOAH) units, that will be placed under an affordability covenant as a result of DHCD financing. Preservation projects that would otherwise meet the criteria of Priority Classification #2 will be considered after the priority evaluation round.

DHCD also received a comment that Priority Classification #1 should be limited to projects providing housing units for extremely low and very low income households. As written, DHCD is prioritizing projects in these Planning Areas that meet the income restrictions determined by

the other threshold criteria. DHCD will not make this change to the first Priority Classification at this time, but will monitor and evaluate the outcome for future funding and allocation rounds.

## **2. Selection Criteria and Level of Detail**

Several commenters sought clarity, detail, and greater transparency on the proposed points totals and scoring criteria and threshold requirements, including that for wealth-building opportunities, acquisition cost reasonableness, and proximity to transit and neighborhood amenities. As stated above, further clarity and guidance related to requirements and allocation of points for all evaluation criteria will be provided in the most current Affordable Housing RFP through which the 9% Tax Credits are competitively awarded.

## **3. Income levels served**

DHCD received a comment suggesting greater preference – up to 50 points, or double the proposed total – be awarded to projects that will serve extremely low income households. Two commenters suggested that projects serving both extremely low and low income households be prioritized more heavily. This prioritization is not changed at this time.

## **4. TOPA preference**

DHCD received two comments suggesting that the preference for projects proposed by or in partnership with tenant groups that exercised their rights through the Tenant Opportunity to Purchase Act (TOPA) be expanded to include projects acquired out of foreclosure or bankruptcy, for which a developer can demonstrate that they have negotiated in good faith with a tenant organization, and have signed either a development agreement or a memorandum of understanding memorializing their commitments.

As tenants do not have TOPA rights in bankruptcy or foreclosure proceedings, DHCD agrees with the suggestion to incentivize purchasers of these properties to work cooperatively with tenants, and to preserve and/or enhance affordability over the long-term. DHCD has expanded the TOPA preference category to include these projects.

One commenter suggested increasing the preference points given to this category of applicants. DHCD is not increasing the points awarded to this criterion at this time.

## **5. Preservation versus Production**

DHCD received one comment that preference be greatly increased for preservation projects, and several additional comments recommending that the production of net new units not be prioritized over the preservation of existing housing. One commenter suggested targeting a percentage of LIHTC allocations for preservation projects. DHCD also received a comment that the QAP should stress anti-displacement efforts in areas of high speculation. DHCD believes the Risk of Loss of Affordability in the Near Term preference criteria addresses the risk of displacement as maximum points will be given to preservation projects with affordability covenants expiring within two years of application, as well as those without any existing affordability covenants.

DHCD understands the inherent challenges highlighted by the commenters, and agrees with many of the points raised. DHCD believes the shift to scoring categories capped at 25 points each will help preservation projects to score competitively by emphasizing programmatic

advantages that may outweigh any locational, unit mix, or other evaluation criteria that cannot be met easily by an existing building(s). In addition, the definition of Net New Units encompasses any unrestricted unit, including any Naturally Occurring Affordable Housing (NOAH) units that will be placed under an affordability covenant as a result of DHCD financing. Therefore, it is possible for certain substantial rehabilitation projects to produce net new units.

## **6. Using a Racial Equity Lens**

One commenter noted that using the historical context of racist housing policy is a much-needed frame for the QAP, and recommended using more precise language regarding “underserved” populations, and expanding the evaluation criteria under the Inclusive and Equitable Housing section to give preference to development teams with demonstrated commitments to advancing racial equity, and to Black, Indigenous, and/or People of Color (BIPOC)-led development team members. DHCD is modifying the Programs to Address Additional Barriers to Housing in response to these comments. The Inclusive and Equitable Housing will not be changed at this time as DHCD believes it currently aligns with other solicitations from the District, and can be evaluated using current District business certification processes. DHCD, however, is open to exploring other ways to utilize a racial equity lens for future Plans.

One commenter recommended that the QAP undergo a racial equity impact assessment. DHCD will explore this recommendation prior to the next iteration of the Plan.

## **7. Small projects**

Two commenters suggested adding a preference for small production and preservation projects of less than 50 units. DHCD also received one comment requesting that projects that include waivers for criteria such as additional subsidy be advanced beyond threshold review for consideration. DHCD does not intend to add a preference for small buildings at this time. Projects that meet all threshold criteria will advance to the evaluation phase. Please see the DHCD website for more information on eligibility and requirements for the Small Building Program, which provides funds for limited systems replacement and other critical repairs for affordable housing properties between five and twenty units: <https://dhcd.dc.gov/page/small-building-program>.

## **8. Addressing additional barriers to housing**

Two commenters provided support for the inclusion of a preference category for projects that include programming and a preference for underserved populations’ access permanent housing.

## **9. Resident services**

DHCD received a comment in support of the QAP’s emphasis on resident services and other innovative project features. Two commenters suggested that this criterion be broadened to include technical assistance for tenants and tenant cooperative boards that are exercising their TOPA rights. Such services are not excluded by the description in the QAP. More detail on this category will be provided in the Consolidated RFP.

Several commenters also suggested that DHCD look to fund resident services programs through additional developer fee. DHCD is actively looking at how resident services are funded in other jurisdictions, but is not making any changes at this time. DHCD will not consider



increasing developer fee to fund services since, unlike most other jurisdictions including those that commenters referenced, DHCD has no dollar cap on developer fee (for example, a total fee limit of \$4 million or some other limit). Applicants can choose to propose setting aside a portion of developer fee to fund resident services.

#### **10. Green building design**

DHCD received one comment stating the Solar Ready Building requirement is insufficient given that many projects opt instead to install green roofs to meet DC's Green Area Ratio (GAR) stormwater requirements, and typically do not then install solar panels in the future. DHCD notes that the updated requirements for the Green Building Design and Construction criterion to increase overall energy efficiency will help to offset any misaligned incentives or requirements specific to the Solar Ready Building requirement. Further, DHCD believes many projects will be required to include solar installations in their architectural plans and project budgets in order to meet the new, more stringent Enterprise Green Communities Plus (EGC+) criteria, which is required for newly constructed buildings over 50,000 square feet. The QAP has been updated to require projects not utilizing EGC+ to request a waiver to the Solar Ready Building provision.

A commenter also suggested that DHCD include electrification retrofits to the Resilient Buildings and Innovative Design criterion, and that this criterion better define features contributing to project resiliency. Both issues will be further elaborated on in the Affordable Housing RFP.

#### **11. Qualified Non-profit Organization participation**

Several commenters requested that projects with Qualified Non-profit Organizations serving as Sponsors be more heavily prioritized, including, for example, by receiving up to 10 points. DHCD understands this request and agrees with many of the advantages highlighted, but is not making a change at this time.

#### **12. Rights of first refusal**

Two commenters wrote in support of the requirement that any majority owner Qualified Non-profit Organization be required to hold a right of first refusal at a purchase price defined by IRC Section 42(i)(7) as a Threshold Requirement. Two wrote in opposition to this requirement, stating that it would disincentivize some for-profit/non-profit ownership partnerships, including those with non-profit organizations for which long-term real estate ownership is not part of their business model. The Threshold Requirement has been modified in response to these comments. In order to receive points for non-profit participation, the participating Qualified Non-profit Organization must hold a right of first refusal that meets all of the requirements detailed in this QAP. Any right of first refusal – whether held by a majority owner non-profit or otherwise – must meet the requirements detailed in the Threshold Requirement section of the QAP, including the purchase price defined in the Code.

DHCD received several comments in support of the inclusion of language intended to prevent investor overreach that undermines non-profit right of first refusal agreements. Two commenters recommended that potential investors or syndicators be required to submit written acknowledgement that they have never sought to undermine the exercise of a right of first refusal or option to purchase in prior transactions, rather than prioritizing projects that provide



such an acknowledgment. As written, this is a requirement for each LIHTC equity Letter of Intent (in the Financing Letters and Terms section), rather than a scoring preference.

A commenter also suggests that the calculation of the right of first refusal purchase price be calculated “by project accountants,” “and deemed final other than due to manifest error.” Another commenter suggested further description of the accountant’s calculation of the right of first refusal price, as well as preserving the right of first refusal notwithstanding any default of the managing member or general partner, and referencing potential revisions to the safe harbor defined in the Code. As written, the purchase price is already required to be calculated by the project accountants. Further, the QAP references Section 42(i)(7), as may be amended from time to time – and thus DHCD does not agree that further clarification or definition of the calculation of the purchase price is necessary at this time.

A commenter recommended that DHCD require that the general partner or managing member be granted the power and authority – without the need to obtain the consent of the investor – to close on the sale of the property to the non-profit holding the right of first refusal. DHCD sees this aspect as subject to negotiation between the developer and its investor, and is not making this change at this time.

DHCD received one comment stating the 24-month period for exercising the right of first refusal will conflict with investor exit timing. DHCD has examined the issue and does not believe there is an inherent conflict.

DHCD received the suggestion that the relevant scoring criteria be named “Right of First Refusal with Non-Profit Participation” to better reflect the specificity of the description. DHCD is not making this change at this time.

### **13. Permanent Supportive Housing (PSH)**

DHCD received a comment commending our commitment to supportive housing, and urging the Department to go further by either increasing the 5% PSH requirement for new units to 30%, or that a supportive housing set-aside be established. As currently written, the QAP includes an option for a Site-Based Permanent Supportive Housing Project as part of the second Priority Classification and will not make further changes at this time.

One commenter noted that the Site-Based Permanent Supportive Housing Project requirements are not included in the QAP. Please see the Homeward DC 2.0 plan for details, available here: <https://ich.dc.gov/page/homeward-dc-20-ich-strategic-plan-fy2021-fy2025>. This link has been added to the body of the QAP as well. Additional detail will be included in the Affordable Housing RFP and any supplemental materials provided therein.

One commenter also recommended that applicants providing PSH units submit a Commitment to Quality checklist or certification such as the Quality Endorsement written by the Corporation for Supportive Housing (CSH) in order to ensure PSH units maintain a high level of quality over time. DHCD will not add this requirement at this time, but is reviewing the endorsement and certification program to potentially integrate any individual requirements or improvements to the detailed PSH requirements in the Consolidated RFP.

#### **14. Mixed Income Housing**

DHCD received numerous comments objecting to the optional Mixed-Income housing scoring preference in the Evaluation Criteria, and the encouragement of mixed-income projects that include market-rate or unsubsidized units. The inclusion of market-rate housing in an applicant's development proposal is not required by the QAP. Rather, the Evaluation Criteria provides optional points for applicants that elect to structure a mixed-income project. Market-rate units are not eligible for LIHTCs, and tax credit equity cannot fund market rate units – thus, as the Urban Institute report notes, most LIHTC projects are 100% affordable in order to maximize the tax credit equity raised for the project in lieu of additional debt or other financing sources (“The Low-Income Housing Tax Credit: How It Works and Who It Serves,” Urban Institute, 2018).

Mixed-income housing has long been recognized as a best practice in the affordable housing field. Mixed-income housing can include projects that are 100% affordable, but provide a range of units for different household incomes (i.e., 30%, 50%, 80% AMGI) or projects that incorporate affordable and market-rate units in the same building. DHCD strongly supports communities that offer housing for a range of household incomes. In fact, preservation projects often must specifically craft their income mix to include higher-income units in order to avoid displacing long-term residents whose household income exceeds tax credit limits.

DHCD must allow its resources to be available to projects across the District that target underserved populations, as well as those that avoid the concentration of low-income housing and meet the individual needs of their communities. The inclusion of market rate units is an evaluation criteria, and is not a requirement for receipt of LIHTCs. DHCD will not modify this criterion in order to allow for and encourage mixed-income communities across the District.

#### **15. Affordability period**

One commenter suggested that all LIHTC projects be required to commit to 50 years of affordability; another recommended that all LIHTC projects commit to affordability in perpetuity. DHCD has increased the extended use period from 15 to 25 years in this update to the QAP. Further, projects committing to additional years of affordability or perpetual affordability will receive scoring preference, as further detailed in the Affordable Housing RFP.

#### **16. Underwriting criteria**

One commenter noted the elimination of the underwriting scoring criteria and the addition of the Baseline Competency category (now the Project Readiness and Past Performance category), which will be used to evaluate underwriting deficiencies in project applications. Without the additional detail to be provided in the RFP, the commenter was unable to evaluate the impact of this change.

DHCD believes the revised structure (as will be further detailed in the Affordable Housing RFP) more clearly articulates the minimum capacity requirements expected of all applicants and no additional changes will be made.

#### **17. Director's Special Initiatives Program**

DHCD received one comment regarding the Director's Special Initiative Program, stating that a 25% annual per capital allocation and unallocated carryover of a prior year allocation is too

high. Given the District's small per capita annual allocation of LIHTC, DHCD believes this maximum is appropriate for Special Initiative projects.

**18. Housing availability**

DHCD received several inquiries about available affordable housing opportunities. For housing resources, please see [dchousingsearch.org](https://dchousingsearch.org) or [coronavirus.dc.gov/rent](https://coronavirus.dc.gov/rent).

## **Additional Information**

For additional information, please contact:

District of Columbia Department of Housing and Community Development  
1800 Martin Luther King Jr. Avenue SE, 2nd Floor  
Washington, DC 20020  
Telephone (202) 442-7200

I, Muriel Bowser, the Mayor of the District of Columbia, hereby signify my adoption and approval of this Qualified Allocation Plan as the Mayor's plan for the allocation of Low Income Housing Tax Credits in the District of Columbia, in conformance with Section 42 of the Internal Revenue Code of 1986, as amended.

A handwritten signature in black ink, appearing to read "Muriel Bowser". The signature is written in a cursive style with a large, prominent initial "M".