

Section 2040.14 New York State Low-Income Housing Tax Credit Program.

(a) *Purpose and background.* Article 2-A of the Public Housing Law (the law), established a State tax credit to be administered by DHCR for owners of housing for persons of low-income. The law authorizes the commissioner to allocate the State low-income housing tax credit (SLIHC) to eligible buildings in the State. The law provides that the SLIHC program be administered in the same manner as the Federal Low-Income Housing Credit Program (LIHC) authorized by section 42 of the code and administered by the commissioner pursuant to this Part and authorizes the commissioner to promulgate rules and regulations necessary to administer the provisions of the law. All determinations by the commissioner regarding eligibility shall be final. All the processes and procedures applicable to the LIHC Program shall apply to the SLIHC Program except as modified below.

(b) *Additional definitions.*

(1) *Eligibility statement* shall mean a statement issued by the commissioner certifying that a building that has been placed in service is an eligible low-income building with a certain amount of SLIHC allowable. For purposes of SLIHC, all references to the IRS form 8609 shall be deemed to be references to an eligibility statement for the SLIHC.

(2) *Eligible low-income building* shall mean any building located in New York which either is a qualified low-income building as defined in section 42(c) of the code, or would be a qualified low-income building under such section if the 20-50 test specified in section 42(g)(1) of the code were disregarded and the 40-60 test specified in such section (requiring that at least 40 percent of the residential units be both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income) were a 40-90 test.

(3) *Qualified basis of an eligible low-income building* shall mean the qualified basis of such building as determined under section 42(c) of the code or which would be determined under such section if the 40-90 test specified above applied under such

section 42 to determine if such building were part of a qualified low-income housing project.

(4) *De minimus determination.* The Commissioner of Taxation and Finance in consultation with the commissioner may exempt from recapture any SLIHC which are allocated to a project or unit which is otherwise eligible but is not an eligible low-income building due to an error by the owner in calculating the low-income eligibility test.

(5) *Notice of noncompliance* shall mean a statement issued by the commissioner and sent to the project owner notifying the project owner that the project is not in compliance with the provisions of this section. For the purposes of SLIHC, all references to IRS form 8823 shall be deemed references to the notice of noncompliance.

(c) *Funding rounds.* A notice of credit availability will be issued annually by the DHCR following enactment of statute providing credit allocation authority. Such notice shall remain in effect until such time as the SLIHC credit allocation authority is expended or expired.

(d) *Project scoring and ranking criteria.* Project applications which pass threshold eligibility review shall be scored based upon the following criteria. The scoring criteria are listed below in descending order according to the relative weight given to each criteria:

(1) Community impact/revitalization (maximum of 15 points). Scored on the extent the project provides affordable housing in an area that meets the following criteria:

(i) limited or no subsidized affordable housing production and an unmet demand for affordable housing in the past 10 years within the primary market area of the proposed location of the project (5 points);

(ii) strong housing market as evidenced by a vacancy rate of less than 5 percent for comparable units in the primary market area (5 points);

(iii) the project is part of a comprehensive community revitalization plan which includes the use or reuse of existing buildings, which may include the historic

rehabilitation of existing buildings, and addresses employment, educational, cultural or recreational opportunities within the community (5 points);

(iv) is supported by the implementation of significant measures including but not limited to infrastructure improvements, real property tax relief and rezoning (5 points).

(2) Financial leveraging (13 points). Scored to the extent that other funding sources (not including a deferred developer's fee) finance a portion of the project's total development cost, including but not limited to sources such as:

(i) permanent funding from sources other than the division or HTFC;

(ii) the donation of land and/or building(s);

(iii) the provision of a long term lease at a nominal amount;

(iv) the net syndication proceeds as a proportion of the total credit requested; and/or

(v) the amount of credit requested per unit adjusted for unit size.

(3) Sponsor characteristics (10 points). Scored on the applicant's development and management team experience in the timely development and completion of low-income housing within approved development budgets, and the management of such housing within approved operating budgets in a manner consistent with all statutes, regulations and policies.

(4) Green Building (maximum of 8 points).

Green building consists of three major components: mandatory criteria (required to qualify for points); standard green building criteria (points awarded for compliance); and green measures beyond the standard criteria (additional points awarded for compliance after meeting the standard criteria).

(i) Mandatory criteria (must satisfy all):

(a) submission of a green development plan outlining an integrated design approach for the operation and development of the project;

(b) a surface water management plan; and

(c) a green building operation plan that includes a manual prescribing proper building maintenance, a handbook and an orientation program for tenants and residents which provides information and training on the proper operation of relevant green features.

(ii) Standard green building criteria (up to 6 points total). Scored to the extent the project includes:

(a) smart growth principles including location and neighborhood fabric measures (up to 3 points):

(b) a Phase I Environmental Site Assessment (1 point);

(c) healthy living environment measures, which promote the use of non-toxic materials and improves indoor air quality (up to 3 points):

(iii) Green measures beyond the standard criteria (2 points).

Scored to the extent the project meets the minimum standard criteria in (ii) above and includes at least one of the following green building measures:

(a) project is located on a brownfield, grayfield or adaptive reuse site;

(b) installation of an acceptable renewable energy system that will provide at least 10 percent of the project's estimated electricity; or

(c) utilization of various building products and techniques beneficial to the environment.

(5) Income mixture (8 points). Scored on the extent affordable housing opportunities are provided to different income levels (*i.e.*, above 90 percent of area median income, 60 percent to 50 percent of area median income, 50 percent to 30 percent of area median income, below 30 percent of area median income) in addition to

the units available to households between 60 percent and 90 percent of area median income.

(6) Long term affordability (7 points). Scored on the extent the applicant proposes to enter into an extended use agreement, which may include a commitment to convey ownership to a local non-profit organization, to operate the project as an eligible low-income building(s) for a period longer than 30 years.

(7) Fully accessible and adapted, move-in ready units (up to 5 points). Scored on whether:

(i) at least 5 percent (rounded up to the next whole number) of the project units are fully accessible and adapted, move-in ready, which includes a roll-in shower, for person(s) who have a mobility impairment and the unit(s) will be marketed to households with at least one member who has a mobility impairment; and at least 2 percent (rounded up to the next whole number) of the project units are fully accessible and adapted, move-in ready for person(s) who have a hearing or vision impairment and the unit(s) will be marketed to households with at least one member who has a hearing or vision impairment (2 points); or

(ii) the percentages of units meeting the requirements of (i) above are equal to or exceed 10 percent and 4 percent (rounded up to the next whole number) respectively (a minimum of two units each)(5 points).

(8) Project readiness (5 points). Scored on the status of financing commitments.

(9) Energy efficiency (5 points). Scored to the extent the applicant demonstrates that, if approved for a credit reservation by the division, the project will be eligible for, will participate in, and will meet the energy efficiency standards of the New York State Energy Research and Development Authority Multifamily Building Performance Program or the New York Energy Star Labeled Homes Program or, the applicant demonstrates that, if approved for a credit reservation by the division, the project will meet enhanced energy efficiency standards acceptable to the division that provide

energy efficiencies and operational cost savings above what is required under section 2040.3(e)(19).

(10) Persons with special needs (5 points). Scored if the project will give preference in tenant selection to persons with special needs, with priority given to such persons who have served in the armed forces of the United States for a period of at least 6 months (or any shorter period due to injury incurred in such service) and have been thereafter discharged or released therefrom under conditions other than dishonorable, for at least 15 percent of the DHCR-assisted units and whether the persons with special needs will be served by supportive services as evidenced by a comprehensive service plan and an agreement or commitment in writing with an experienced service provider.

(11) Marketing plan/public assistance (5 points). Scored on the extent preference in selection of tenants will be given to persons from public housing waiting lists or other existing waiting lists for subsidized housing and/or to persons and families whose current housing fails to meet basic standards of health and safety and who have little prospect of improving the condition of their housing except by residing in a project receiving SLIHC and the preference is evidenced by an enforceable agreement with the source of the referral.

(12) Individuals with children (5 points). Scored on the ratio of bedrooms to units in a project serving households with children.

(13) Participation of non-profit organizations (4 points). Scored on the extent of participation of a non-profit organization:

(i) whether a local non-profit organization or its for-profit wholly owned subsidiary:

(a) has fostering of low-income housing as one of its tax-exempt purposes,

(b) is not affiliated, established or controlled by a for-profit entity,
and

(c) will serve as sole general partner of the limited partnership/project owner or sole managing member of the limited liability company/project owner (4 points);

or

(ii) whether a local non-profit organization or its for-profit wholly owned subsidiary has a defined and substantive role in the development or management of the project through the extended use period (2 points);

or

(iii) whether a non-profit organization that does not qualify as a local non-profit organization under section 2040.2(m), or its for-profit wholly owned subsidiary, has a defined and substantive role in the development or management of the project through the extended use period (1 point).

(14) Historic nature of project (up to 3 points). Scored on whether:

(i) the project includes the rehabilitation of a historic building (2 points);

(ii) the applicant demonstrates that the project will include a building that will be eligible for, and the applicant will seek, a federal tax credit for the rehabilitation of historic buildings (1 point).

(15) Project amenities (maximum of 2 points). Scored to the extent the project provides any of the following (1 point each):

(i) access to discounted broadband internet service to each residential unit;

(ii) on-site Energy Star appliances or equivalent in common laundry facilities, or washer/dryer hookups in each residential unit;

(iii) Energy Star central air-conditioning or the equivalent that will produce comparable energy efficiency or savings;

(iv) an outdoor recreational area or garden space;

(v) Energy Star dishwashers or the equivalent that will produce the same or comparable energy efficiency or savings in each residential unit and the community kitchen, if any; or

(vi) a computer lab equipped with Energy Star or equivalent computers and equipment, with a minimum of one computer for every 20 residential units.

(e) *Determination of the amount for SLIHC allocation.* DHCR shall determine the dollar amount of the SLIHC to be allocated to a project in the same manner as when determining the dollar amount of a LIHC allocation, except for the following rule. The calculation of the gap amount for SLIHC will assume the maximum allocation of LIHC is available for any portion of a qualified building which will be regulated at or below 60 percent of area median income.

(f) General. The division reserves the right to allocate SLIHC in a manner which yields an equitable distribution of SLIHC throughout the State, to insure the participation of qualified non-profit organizations and to implement such special priorities or demonstration programs contained in the notice of credit availability. Any special priorities or demonstration programs shall be consistent with priorities and selection criteria set forth herein and shall be described in detail in the notice of credit availability and requests for proposals. Notwithstanding the scoring system set forth above, the division reserves the right to deny any request for an allocation of SLIHC irrespective of its point ranking if such request is inconsistent with the State's housing goals and shall have the power to allocate SLIHC to a project irrespective of its point ranking, if such intended allocation is: in compliance with the law; in furtherance of the State's housing goals ; and determined by the commissioner to be in the interests of the citizens of the State of New York. A written explanation shall be available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and the selection criteria set forth herein.

(g) Set-Asides. The division reserves the right to set aside credit for the purpose of implementing the State's housing goals, including, but not limited to, set-asides for preservation projects and supportive housing projects.