

Summary of Proposed Changes to Title 21, Part 2188 of the NYCRR, Qualified Allocation Plan (“QAP”).

The proposed rule modifies the language of Part 2188.1 Introduction to increase clarity and stress that The New York State Housing Finance Agency (“HFA” or “Agency”) does not currently expect to allocate any “9%” LIHC.

The proposed modifications of Part 2188.2, Definitions (1) eliminate unnecessary definitions; (2) conform abbreviations and definitions with 9 NYCRR 2040 (“DHCR QAP”) including in 2188.2(n) adopting “LIHC” as the abbreviation for Low Income Tax Credits; (3) add several definitions including 2188.2(a), Adjusted Project Cost, 2188.2(k), Housing Opportunity Projects, 2188.2(i), Identity of Interest, and 2188.2(gg), Visitability Standards.

The proposed rule eliminates 2188.3, Goals and Needs Assessment as unnecessary.

The proposed rule modifies 2188.4, HFA Allocation Process by separating the processes for Private Activity Bond Credits and State Credit Ceiling Credits. The proposed 2188.3 sets forth the HFA Private Activity Bond Credits Allowance Process which, except for some language changes for clarity, is substantially the same as the current process. The proposed 2188.4 sets forth the HFA State Credit Ceiling Credits Allocation Process which substitutes the DHCR QAP allocation definitions, processes, procedures and requirements for the current QAP process.

The proposed rule modifies 2188.5, Threshold Eligibility Requirements for LIHC Allocation by clarifying language, modifying several Threshold Requirements and adding several new Threshold Requirements.

The proposed substantive modifications of Part 2188.5, Definitions, Threshold Eligibility Requirements for LIHC Allocation include:

Revising 2188.5(b) to require all applicants to waive to waive the right to request a Qualified Contract and provide that the extended use period will not be subject to early termination pursuant to the Qualified Contract provisions of the IRC §42.

Revising 2188.5(i) to not require all necessary governmental approvals in place at the time of application.

Revising 2188.5(k) to delay requiring the credit and background check to be completed until the time of second underwriting which usually occurs just prior to closing.

Revising 2188.5(l) prevents the project developer, owner and/or manager and their principals from including anyone who, in sole judgement of the Agency, has initiated or been the decision maker in requesting a qualified contract under §42(h)(6)(F) for a project in New York State.

Revising 2188.5(q) to clarify language and update the Agency's "Green" requirements.

Adding 2188.5(r) to require projects to comply with the Agency's Visitability Standards.

Adding 2188.5(s) to require projects' qualified basis for rehabilitation expenditures to equal or exceed three times the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) in effect at the time of a project's construction closing. The per low-income unit qualified basis amount under §42(e)(3)(A)(ii)(II) in effect in 2019 is \$7,000 per unit. The minimum qualified basis for rehabilitation expenditures for projects closing in 2019 would therefore be \$21,000 per low income unit,

Adding 2188.5(t) to require the applicant to agree to permit HFA to commission a cost audit of all the project related costs, agree to permit the Agency to commission an energy and green performance audit and include a provision in all contracts with contractors, design professionals and consultants that permits the Agency's auditors to examine the books and records relevant to the project

Adding 2188.5(t) to require the project applicant to agree not to contract for any services related to the project with any entity on any Federal or New York State debarment list and include a provision in all contracts related to the project barring the participation of entities on such lists.

Adding 2188.5(t) to require the project applicant, developer, owner, general contractor and/or manager and their principals to remain in compliance with all relevant federal, New York State, Division, and Agency policies and requirements and local laws and regulations, including but not limited to the prohibition against discriminating against Section 8 Housing Choice Voucher holders, nondiscrimination and marketing policies, guidelines, and requirements.

The proposed rule modifies 2188.6, Scoring Criteria for State Credit Ceiling LIHC Allocation by substituting evaluating the applications using the Definition, Process, Threshold Eligibility Requirements, General, and Scoring Criteria contained in the DHCR QAP.

The proposed rule modifies 2188.7, Procedures for Monitoring of Projects, by revising language, both to make substantive changes and clarify language, and adding a new section.

The most substantively significant revisions are adding the ability for the Agency to adjust monitoring fees based on administrative or other cost increases to monitor overall compliance in 2188.7(d)(3); deleting specific references to various income tests to give the Agency flexibility to implement income averaging in tax credit projects in 2188.7(g)(2); and requiring all 100% tax credit projects monitored under this QAP must seek HFA's written concurrence prior to implementing waivers of the tenant income recertification requirement in 2188.7(i).

The proposed rule adds 2188.7(b) delegating all HFA administrative functions related to the operation of qualified low-income buildings shall be the responsibility of the LIHC Monitoring Officer who will be responsible for enforcing all regulatory agreements and reporting noncompliance to the IRS.

The proposed rule modifies 2188.8, Miscellaneous Provisions, in addition to minor language changes, by substantially revising 2188.8(e), Requests for Qualified Contracts and adding 2188.8(f) concerning maintenance of records of vacancies.

The revisions to 2188.8(e) limits the applicability of the section to projects in which the project owner has a regulatory agreement executed by the Agency which specifically grants the right to request a qualified contract. Other language added allows the Agency to specify the checklist of items required to be submitted as part of a Request for a Qualified Contract. The addition also provides that a nonrefundable fee, in a reasonable amount determined by the Agency, is due upon submission of a Request for a Qualified Contract and that the owner shall be required to pay for any services reasonably determined by HFA to be necessary the technical review of a Request for a Qualified Contract to an accountant, appraiser or other relevant expert.

The added 2188.8(f) requires all projects to at all times maintain adequate records, in the Agency's sole discretion, concerning vacancies. The section also states that these records should be updated at least monthly and, upon HFA's request, provided to the Agency in order to maintain the State's ability to quickly respond to natural disasters and other emergencies.