

## Regulatory Impact Statement

### 1. Statutory Authority:

Executive Order Number 11 (March 2, 2011) authorizes the Commissioner of Housing to administer New York State's annual allotment of federal low-income housing tax credits ("low-income housing credit", "LIHC" or "Credit") and permits the Commissioner to delegate allocation authority to other qualified instrumentalities of the State of New York. The Commissioner has delegated a portion of such authority to the New York State Housing Finance Agency (HFA). U.S. Internal Revenue Code ("IRC") Section 42(m) requires that Credit be allocated pursuant to a "qualified allocation plan" ("QAP"), which is promulgated as a rule.

### 2. Legislative Objectives:

The LIHC program was enacted to encourage private investment in affordable housing.

### 3. Needs and Benefits:

The purpose of the proposed amendments is to clarify program enrollment and implementation requirements, and the contractual obligations of participating owners. In addition, the amendments clarify certain defined terms to facilitate program usage, add provisions relating to recent IRS amendments to the Code and eliminate sections that are not significant to the current administration of the program.

The amendments strengthen project disclosure and compliance requirements, including increased financial disclosure. This change implements the National Council of State Housing Agencies (NCSHA) recommended practice seeking to ensure full disclosure of all project costs and transaction fees charged in connection with the Credit program.

The amendment restricts project owners' right to request a Qualified Contract at the end of the tax credit compliance period, ensuring the long term affordability of projects through the entire extended use period.

The amendment broadens the Agency's fee structure to include reasonable "Administrative Fees." This implements the NCSHA recommended practice that agencies use a reasonable administrative fee structure to account for both the cost of monitoring during the project regulatory term and other agency administrative costs.

The amendment deletes reference to various income tests, providing the Agency flexibility to implement new income tests permitted by the Code, such as income averaging.

Finally, the amendment clarifies and modifies defined terms to update and replace outdated terminology.

The proposed amendments are necessary to (i) conform with the Agency's, and the New York State's, current application review and award processes and its overall program administration, (ii) provide the Agency with flexibility in assessing which projects qualify for Credit and (iii) update the Agency program requirements to conform with current trends in the housing industry and State housing goals.

#### 4. Costs

##### (1) Costs to State Government

There will be no costs to state government because of the proposed amendments to the Existing Rule. LIHC will continue to be implemented with existing staff resources.

(2) Costs to local government.

None.

(3) Cost to private regulated parties

The proposed rule could result in increased costs to regulated parties due to changes in administrative fee policy. As noted above, however, this change addresses a NCSHA recommended practice. Any increased cost to projects would likely be offset by improved Agency administration and monitoring, ensuring projects are better operated and maintained, thereby reducing long-term costs of project maintenance.

5. Local Government Mandates

None.

6. Paperwork:

The rule permits the filing of an on-line application and supporting documentation to request Credit financing.

7. Duplication:

None.

8. Alternatives:

The alternative to the Proposed Rule is to retain the Existing Rule, which does not address necessary changes and clarifications of definitions, recent changes to the Code (including Income Averaging), funding process, threshold eligibility, scoring criteria, State goals and program efficiency. Specifically:

1. The alternative to adding a “Commissioner/CEO” definition, Section 2188.2(e) is to not accurately reflect the Agency’s management.
2. The alternative to expanding the definition of “Cost Certification,” Section 2188.2(f), is failing to require adequate financial disclosure.

3. The alternative to adding a “Housing Opportunity Projects” definition, Section 2188.2(k), is failing to (i) address this NCSHA recommended practice and, (ii) decrease barriers to building affordable housing in areas with unmet demand.
4. The alternative to adding an “Identity of Interest” definition, Section 2188.2(k), is failing to require applicants to provide sufficient information to evaluate the ownership of proposed projects.
5. The alternative to changing the abbreviation of Low Income Housing Tax Credit to “LIHC” from “LIHTC” in Section 2188.2(p) is to not conform the abbreviation to the abbreviation in 9NYSCRR
6. The alternative to adding language to “Per Unit Eligible Basis Limit” definition, Section 2188.2(w), is failing to provide applicants sufficient information of the Agency’s eligibility requirements, policies and procedures.
7. The alternative to adding and revising language in the “State Designated Building” definition, Section 2188.2(ee) is failing to inform applicants of the Agency’s eligibility requirements, policies and procedures.
8. The alternative to adding a “Visitability Standards” definition, Section 2188.2(hh), is failing to define a key term and not providing sufficient information for applicants if their projects qualify for LIHC.
9. Retaining the former 2188.3 Goals and Needs assessment would include extraneous information in the Rule.
10. The alternative to revising 2188.3 HFA Private Activity Bond Credits Allowance Process would be to retain a complicated description of an outdated process, confuse applicant about the Agency’s role in the tax credit program, and fail to clarify the Agency’s process to approve LIHC...
11. The alternative to revising 2188.3 HFA State Ceiling Credits Allowance Process would be to retain a complicated description of an outdated process, confuse applicant about the Agency’s role in the tax credit program, and fail to clarify the Agency’s process to approve LIHC

12. The alternative to revising Section 2188.5(b) would be to continue to allow applicants to have the option of requesting an early termination of project affordability under the Qualified Contract provisions of IRC §42.
13. The alternative to revising Section 2188.5(f) would be requiring applicants to demonstrate that all steps necessary to secure local approvals have been taken prior to application, thereby exposing projects to local barriers to development.
14. The alternative to revising Section 2188.5(n) would be risking that the Agency would not learn of notices of non-compliance.
15. The alternative to revising Section 2188.5(q) would be to fail to clarify the Agency's "green" requirements.
16. The alternative to adding Section 2188.5(r) would be to allow project to not meet the Agency's Visitability standards.
17. The alternative to adding Section 2188.5(s) would be to allow applicants to invest less in the rehabilitation of existing projects and still have the rehabilitation investment eligible for LIHC.
18. The alternative to adding Section 2188.5(t) would be to limit the Agency's ability to require adequate financial disclosure.
19. The alternative to adding Section 2188.5(w) is to not add an explicit requirement that the applicant will not contract 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.
20. The alternative to adding Section 2188.5(x) is to not add an explicit requirement that all applicants and their project development teams be in compliance with all relevant federal, New York State, Division, and Agency policies, requirements, and local laws and regulations.

21. The alternative to revising 2188.6 is to retain the current scoring criteria instead of replacing the criteria with the Definition, Process, Threshold Eligibility Requirements, General, and Scoring Criteria contained in 9NYCRR 2040 and risking that two state agencies under common management would use different criteria to allocate the same limited resource.

22. The alternative to revising 2188.6 is to retain the current LIHC monitoring procedures, record keeping requirement, certification requirements, inspection requirements, and Notification of Noncompliance procedures and not conform them to the LIHC monitoring procedures contained in 9 NYCRR Part 2040.

9. Federal Standards:

This Rule does not exceed the minimum standards of the federal government for the LIHC program.

10. Compliance Schedule:

Not applicable. The rule changes will affect only those who apply to HFA for allocations of Credit after the Rule amendments are effective.