



New York State Homes & Community Renewal New York State Low Income Housing Credit (“SLIHC”) Bifurcation and Transferability Information

The enacted New York State FY 2018-19 budget included an authorization allowing for the bifurcation and transfer of the State Low-Income Housing Tax Credit (“LIHC”). This authorization is intended to broaden the potential investor pool and increase demand for SLIHC and thereby increase the amount of SLIHC equity invested in the development of affordable housing.

Bifurcation

Under the bifurcation provision of the authorization, the allocation of SLIHC may be made without regard to and in a separate manner from any federal low-income housing credit (“LIHC”) that may be allocated with respect to an eligible low-income building. Prior to this change, investors in SLIHC were required to be the same investors who purchased LIHC, even if those investors had limited or no New York State tax liability. To utilize bifurcation, project sponsors, syndicators and investors must disclose to New York State Homes and Community Renewal (“HCR”) in writing that bifurcation is being utilized in support of a project’s financing plan.

Transferability

Under the transferability provisions of the authorization, taxpayers allowed SLIHC under Article 2-a of the Public Housing Law may now “transfer” SLIHC, in whole or part, to another person or entity (known under the authorization as a “Transferee”) even if that Transferee has no ownership interest in the SLIHC-eligible affordable housing project.

Transferees are entitled to apply the transferred SLIHC against a tax imposed under Article 9-A, 22, or 33 of the Tax Law. The statute prohibits Transferees from any further transfer of SLIHC acquired by transfer.

To transfer SLIHC, a taxpayer allowed SLIHC under Article 2-a of the Public Housing Law (“Taxpayer”) must enter into a Transfer Contract with a Transferee (“Transfer Contract”) that specifies, at a minimum (each being a “Transfer Contract Requirement”), (i) the building identification numbers for all buildings in the project (required prior to issuance of the DTF-625); (ii) the date each building was placed in service (required prior to issuance of the DTF-625); (iii) the fifteen year compliance period for the project; (iv) the schedule of years for which the transferred SLIHC may be claimed and any amount that may have previously been claimed; (v) the amount of consideration received by the Taxpayer, if any, for the transferred SLIHC; (vi) the amount of SLIHC being transferred; (vii) that the Taxpayer transferring the SLIHC remains solely liable for all obligations and liabilities imposed on the Taxpayer with respect to the SLIHC, none of which shall apply to the Transferee; and (viii) the name of the guarantor who will remain liable for ensuring that

all SLIHC obligations (the “Obligations”) are met. If such guarantor is different than the Taxpayer, such guarantor shall be a party to the Transfer Contract and, if the Taxpayer directs the SLIHC award to a QNPO (defined hereafter), the QNPO shall also be a party to the Transfer Contract.

HCR shall have the ability to enforce any Obligations and will require a guarantor with sufficient assets to cover any liabilities on the part of the Taxpayer, as determined by HCR, should those Obligations not be met.

Timing Considerations for SLIHC Transfer

Pursuant to the statute, no transfer of SLIHC will be effective unless the Taxpayer allowed the SLIHC files a Transfer Statement along with a copy of the Transfer Contract with the Commissioner of HCR and the Commissioner approves such transfer.

Entities that have been awarded or have otherwise received a commitment of SLIHC that elect to utilize transferability prior to construction financing closing must submit a draft Transfer Statement and Transfer Contract to HCR for its review at least 30 days prior to the anticipated construction financing closing date and a final Statement and Contract no less than seven days prior to the anticipated closing. The Transfer Contract between transferor and transferee (and the guarantor and QNPO, as applicable) will be executed at or prior to the construction financing closing but may be subject to amendment with the consent of HCR further described in the following paragraph.

If the proposed Transfer Statement and Transfer Contract are acceptable to the Agency, HCR will issue an Approval Statement of the SLIHC transfer at or prior to the construction financing closing which will become effective at the same time that HCR issues the final SLIHC allocation and certification through the DTF-625 subsequent to project completion. The SLIHC transfer will be subject to the same terms and conditions as HCR’s issuance of the DTF-625. Subject to the consent of HCR, the Transfer Statement and Contract may be amended prior to the issuance of form DTF-625 to accomplish the replacement of the Transferee designated at construction financing closing.

Participation of Qualified Non-Profit Organizations

To further increase the amount of equity generated by the SLIHC beyond what would normally be achievable under bifurcation and transferability, entities that have been awarded or otherwise received a commitment of SLIHC may, upon approval by HCR, direct such SLIHC to be issued by the Agency to a qualified Non-Profit Organization (QNPO), that will sell the SLIHC to a Transferee or Transferees, provided that all the proceeds from the sale of the SLIHC, less a reasonable administrative fee, if any, are used as a financing source for the eligible low-income project on such terms and in such an amount acceptable to HCR. A QNPO must have as one of its tax-exempt purposes the fostering of low-income housing. QNPOs must be in good standing with all governmental agencies to act in this capacity.

When SLIHC is directed to a QNPO under the conditions and requirements described in the foregoing paragraph, the Transfer Contract and Transfer Statement must additionally specify: (i) the name and principals (board president/chairperson and chief executive officer) of the QNPO to which the SLIHC has been directed to by Taxpayer and issued to by the Agency; (ii) the amount of

SLIHC being sold by the QNPO to the Transferee (iii) the amount, timing, and any other terms and conditions of the consideration to be received by the QNPO from the sale of the SLIHC to the Transferee; (iv) the amount of any administrative fee charged by the QNPO, if any; and (v) the terms and conditions under which the proceeds from the sale of the SLIHC will be loaned and/or contributed by QNPO to meet the financing needs of the eligible project, including the timing of such payments. Additionally, the QNPO shall be a party to the Transfer Contract.

Technical Assistance

Applicants, project sponsors, syndicators and/or investors contemplating the use of SLIHC bifurcation and/or transferability are advised to schedule a technical assistance session with HCR to discuss the use of these tools.