

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 minim[us] 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 as may be further

described in a notice of credit availability, request for proposals, design requirements manual, capital programs manual or other manual or document issued by the Division:].

The scoring criteria are listed below in descending order according to the relative weight given to each criteria:]

(1) Community impact/revitalization (maximum of 10 [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] i) the project proposes the use or reuse of existing buildings, in-fill new construction, and/or the demolition and replacement of buildings having a blighting impact on a community and the rehabilitation of which is impracticable and advances [is part of] a neighborhood specific revitalization plan or is complementary to an ongoing neighborhood specific planning and/or revitalization effort ("a Concerted Community Revitalization Plan"). Plans and/or efforts may be led by local government, locally based community organizations and/or individuals. Plans and/or efforts will be evaluated based on whether they seek to fundamentally improve the quality of life and opportunities for neighborhood residents based on the following criteria:

- a) incorporate easy access to public transportation and/or promote walkable communities in which essential goods and services are accessible within a short and safe walking distance;

- b) are consistent with the historic character and density of the neighborhood;
- c) provide evidence of an ongoing, multi-faceted revitalization effort and/or plan that addresses the homeownership, commercial, service, employment, nutritional, recreational, educational, and cultural needs of the neighborhood;
- d) result from an open, public process in which neighborhood residents have had meaningful opportunities to contribute to its development; [and,]
- e) [include a comprehensive neighborhood asset analysis that] identifies [the] existing neighborhood strengths upon which the revitalization plan and/or effort is based, including, but not limited to, access to employment opportunities and proximity to viable commercial districts, stable neighborhoods, and cultural institutions [(5 points).];
- f) identifies goals to be met and obstacles to be overcome by the plan; and,
- g) promotes mixed-income development (up to 5 points).

([iii] ii) the project clearly advances specific housing objectives of a [r]Regional [e]Economic [d]Development [c]Council strategic plan applicable to the area in which the project will be located (5 points).

(2) Financial leveraging (up to 12 [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 (up to 10 points). Scored on the applicant's development and management team experience in the timely development and completion of low-income housing within proposed development budgets and project scope, 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] up to 5 points). Scored on the extent the project identifies and will comply with a sustainable green building strategy identified in the request for proposals for each funding round.

(5) Income mixture (up to 12 [10] 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 and whether the applicant provides evidence that a public housing authority will make referrals to the proposed project.

(6) Fully accessible and adapted, move-in ready units (up to 5 points). Scored on whether the applicant has provided evidence that there is sufficient market demand for the number and type of units proposed and has certified it will enter [entered] into a written agreement with an experienced service organization(s) to provide appropriate referrals for fully accessible and adapted, move-in ready units:

(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 with an attached seat or is designed to accommodate a roll-in shower with an attached seat which will be installed at the owner's expense upon request, 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. Fully accessible and adapted, move-in ready units shall be equitably distributed among the various dwelling unit types in the project based upon:

(A) evidence of market demand;

(B) the guidance of the service organization providing referrals to the project; and/or

(C) applicable federal or state law (2 points).

(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). Fully accessible and adapted, move-in ready units shall be equitably distributed among the various dwelling unit types in the project based upon:

(A) evidence of market demand;

(B) the guidance of the service organization providing referrals to the project; and/or,

(C) applicable federal or state law (5 points).

(7) Project readiness (up to 10 points). Scored on the extent the application demonstrates the likelihood of a construction closing in the shortest possible timeframe based on an assessment of the status of financing commitments, applicable environmental approvals or clearances, and whether the project is supported by the implementation of significant measures including but not limited to infrastructure improvements, real property tax relief and rezoning,

(8) 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 offered [served by] supportive services as evidenced by a comprehensive service plan and [an] a written commitment or agreement [or

commitment in writing] with [an experienced] a service provider experienced in meeting the specific service needs of persons for which preference is provided.

[(9) 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.]

[(10] 9) Individuals with children (up to 7 [5] points). Scored on the ratio of bedrooms to units in a project serving households with children and whether the project is a housing opportunity project or advances a neighborhood specific revitalization plan and/or effort.

[(11] 10) Participation of non-profit organizations (up to 4 points). Scored on the extent of participation of a non-profit organization or organizations:

(i) whether local non-profit organization(s) or for-profit wholly owned subsidiary(ies):

(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(s) of the limited partnership/project owner or sole managing member(s) of the limited liability company/project owner (4 points);

or

(ii) whether local non-profit organization(s) or for-profit wholly owned subsidiary(ies), with demonstrable housing experience and capability, has a defined and substantive role in the ownership, development and management of the project through the extended use period (2 points);].

[or

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

[[12] 11] 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).

[[13] 12] Cost effectiveness (5 points). Points will be awarded to individual projects based upon a comparison of project costs to the costs proposed in other project applications.

([14] 13) Housing opportunity [projects] (up to 5 [3] points). Scored to the extent the project is in close proximity to public transportation, is located in a community with a low incidence of crime, [is served by high performing schools and/or is located outside of a HUD-designated Qualified Census Tract] and/or is located in an area of opportunity as set forth in a request for proposals issued by the Division.

(14) Investment in underserved areas (5 points). Scored on whether there is 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.

(15) Minority and Women Owned Business Enterprise and Service-Disabled Veteran-Owned Business participation (up to 2 points). Scored to the extent the project development team includes NYS certified minority and/or women-owned and service-disabled veteran-owned businesses.

(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 affirmatively advances fair housing, yields an equitable distribution of SLIHC throughout

the State, to ensure the participation of qualified non-profit organizations, to implement such special priorities or demonstration programs contained in the notice of credit availability or request for proposals and to advance coordinated investments by State, federal, and local governmental partners. The Division also reserves the right to assign scoring points as set forth in Section 2040.3(f) herein to the extent a project addresses the Division's underwriting and design standards, as set forth in a request for proposals.

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 including the housing objectives of a Regional Economic Development Council applicable to the area in which the project is located, 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 including the housing objectives of a Regional Economic Development Council applicable to the area in which the project is located; 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 the housing objectives of the Regional Economic Development Council applicable to the area in which the project is located, the Division reserves the right to set aside credit, including, but not limited to, set-asides for housing opportunity projects, preservation projects and supportive housing projects.