

1 **DIVISION OF HOUSING AND COMMUNITY RENEWAL**

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3 **LOW-INCOME HOUSING CREDIT QUALIFIED ALLOCATION PLAN, TITLE 9 PART 2040**

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6 **Statutory Authority: U.S. Internal Revenue Code, Section 42(m); NYS Public Housing Law,**
7 **Article 2 Section 19 and Article 2-A Sections 21-25**
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9 **Section 2040.14 New York State Low-Income Housing Tax Credit Program.**

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

19 (b) *Additional definitions.*

20 (1) *Eligibility statement* shall mean a statement issued by the commissioner certifying that a
21 building that has been placed in service is an eligible low-income building with a certain amount of
22 SLIHC allowable. For purposes of SLIHC, all references to the IRS form 8609 shall be deemed to be
23 references to an eligibility statement for the SLIHC. The DTF-625 Low-Income Housing Credit
24 Allocation and Certification form serves as the eligibility statement for SLIHC.

25 (2) *Eligible low-income building* shall mean any building located in New York which either is a
26 qualified low-income building as defined in section 42 of the Code, or would be a qualified low-income
27 building under such section if the 40-60 test specified in such section (requiring that at least 40 percent

1 of the residential units be both rent-restricted and occupied by individuals whose income is 60 percent
2 or less of area median gross income) were a 40-90 test.

3 (3) *Qualified basis of an eligible low-income building* shall mean the qualified basis of such
4 building as determined under section 42 of the Code or which would be determined under such
5 section if the 40-90 test specified above applied under such section 42 to determine if such building
6 were part of a qualified low-income housing project.

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

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

15 (c) *Funding rounds*. A notice of credit availability and/or request for proposals will be issued annually,
16 or as otherwise determined, by DHCR.

17 (d) *Project scoring and ranking criteria*. Project applications which pass threshold eligibility review shall
18 be scored based upon the following criteria as may be further described in a notice of credit availability,
19 request for proposals, design guidelines, sustainability guidelines, capital programs manual or other
20 manual or guidance issued by the division:

21 (1) Community impact/revitalization (up to 10 points). Scored to the extent the project provides
22 affordable housing in an area that meets the following criteria:

1 (i) the project proposes the use or reuse of existing buildings, infill new construction,
2 and/or the demolition and replacement of buildings having a negative impact on a community
3 and the rehabilitation of which is impracticable and advances a neighborhood specific
4 revitalization plan or is complementary to an ongoing neighborhood specific planning and/or
5 revitalization effort (“a Concerted Community Revitalization Plan”). Plans and/or efforts may be
6 led by local government, locally based community organizations and/or individuals. Plans and/or
7 efforts will be evaluated based on the extent to which they propose community enhancements
8 that seek to fundamentally improve the quality of life and opportunities for neighborhood
9 residents based on the following criteria (up to 5 points):

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

13 (b) are consistent with the historic character and density of the neighborhood;

14 (c) provide evidence of an ongoing, multi-faceted revitalization effort and/or plan
15 that addresses the homeownership, commercial, service, employment, nutritional,
16 recreational, educational, and cultural needs of the neighborhood;

17 (d) result from an open, public process in which neighborhood residents have had
18 meaningful opportunities to contribute to its development;

19 (e) identify existing neighborhood strengths upon which the revitalization plan
20 and/or effort is based, including, but not limited to, access to employment opportunities
21 and proximity to viable commercial districts, stable neighborhoods, and cultural
22 institutions;

23 (f) identify goals to be met and obstacles to be overcome by the plan; and,

1 (g) promote mixed-income development.

2 (ii) scored as to whether the project (2 points):

3 (a) will provide non-residential space (i.e., retail, commercial or community facility)
4 that clearly serves the critical unmet needs of both the tenants and local residents; or

5 (b) will include commercial space available for ownership/operation by a local
6 resident.

7 (iii) the project clearly advances specific housing objectives of a Regional Economic
8 Development Council strategic plan applicable to the area in which the project will be located or
9 another State-sponsored community revitalization effort or initiative, as may be set forth in a
10 request for proposals and/or other agency guidance (up to 3 points).

11 (2) Financial leveraging (up to 10 points). Scored to the extent that other funding sources (not
12 including a deferred developer's fee) finance a portion of the project's total development cost, including
13 but not limited to sources such as:

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

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

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

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

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

19 (3) Sponsor characteristics (up to 11 points). Scored on the applicant's development and
20 management team experience in

21 (i) the timely development and completion of low-income housing within proposed
22 development budgets and project scope;

1 (ii) meeting and exceeding MBE, WBE and SDVOB participation goals on previous HCR-
2 financed projects; and/or

3 (iii) the management of such housing within approved operating budgets in a manner
4 consistent with all statutes, regulations and policies.

5 (4) Sustainability (up to 5 points). Scored to the extent the project identifies and will comply with
6 a sustainable green building strategy which exceeds the minimum baseline requirements set forth in
7 HCR's sustainability guidelines, request for proposals and/or other agency guidance.

8 (5) Income mixture (up to 11 points). Scored to the extent affordable housing opportunities are
9 provided to different income levels (i.e., above 90 percent of area median income, 60 percent to 50
10 percent of area median income, 50 percent to 30 percent of area median income, below 30 percent of
11 area median income) in addition to the units available to households between 60 percent and 90
12 percent of area median income.

13 (6) Additional HCR accessible units (up to 5 points). Scored to the extent the project's design
14 and construction will provide for an additional percentage of accessible units for persons with a mobility
15 impairment and hearing or vision impairment which exceeds the minimum required as set forth in HCR's
16 design guidelines, request for proposals and/or other agency guidance and the applicant has provided
17 evidence that there is sufficient market demand for the number and type of units proposed and has
18 certified it will enter into a written agreement with an experienced service organization(s) to provide
19 appropriate referrals for occupancy of such units.

20 (7) Project readiness (up to 10 points). Scored to the extent the application demonstrates the
21 likelihood of a construction closing in the shortest possible timeframe based on an assessment of the
22 status of financing commitments, applicable environmental approvals or clearances, and whether the

1 project is supported by the implementation of significant measures including but not limited to
2 infrastructure improvements, real property tax relief and rezoning.

3 (8) Persons in need of supportive housing (up to 5 points). Scored to the extent that the project
4 will designate a percentage of the SLIHC-assisted units in the project for persons in need of supportive
5 housing, as set forth in the request for proposals and/or other agency guidance, and meet the
6 requirements enumerated in section 2040.2(z) of this Part.

7 (9) Individuals with children (up to 5 points). Scored on the ratio of bedrooms to units in a project
8 serving households with children which qualifies for scoring points pursuant to paragraph
9 2040.14(d)(13) of this section or advances a neighborhood specific revitalization plan and/or effort.

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

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

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

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

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

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

21 (iii) whether non-profit organization(s) that does not qualify as a local non-profit
22 organization(s) under section 2040.2(o) of this Part, or its for-profit wholly owned subsidiary(ies),

1 has a defined and substantive role in the ownership, development or management of the project
2 through the extended use period (1 point).

3 (11) Historic nature of project (up to 2 points). Scored on whether:

4 (i) the project includes the rehabilitation of a historic building (1 point);

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

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

10 (13) Projects in well-resourced area (up to 5 points). Scored to the extent the project is located
11 in an area which addresses certain socio-economic factors, which may include but not be limited to,
12 educational opportunity and low poverty rates, as set forth in a request for proposals and/or other
13 guidance issued by the HCR.

14 (14) Transit-oriented development (up to 2 points). Scored to the extent the project promotes
15 transit-oriented development by its close proximity to public transportation, as set forth in a request
16 for proposals and/or other guidance issued by HCR.

17 (15) Investment in underserved areas (5 points). Scored on whether there is limited or no
18 subsidized affordable housing production and an unmet demand for affordable housing in the past
19 10 years within the primary market area of the proposed location of the project.

20 (16) Minority and Women-Owned Business Enterprise and Certified Service-Disabled
21 Veteran-Owned Business participation (up to 5 points). Scored to the extent the project includes a
22 MBE and/or WBE with a controlling or material ownership interest in the project to be maintained
23 throughout the development, construction and regulatory term of the project, as set forth in a request

1 for proposals or other agency guidance and/ or the development team includes a MBE, WBE, or
2 SDVOB.

3 (e) *Determination of the amount for SLIHC allocation.* DHCR shall determine the dollar amount of the
4 SLIHC to be allocated to a project in the same manner as when determining the dollar amount for a
5 LIHTC allocation, if applicable.

6 (f) *General.*

7 (1) The division reserves the right to allocate credit in a manner which affirmatively advances
8 fair housing, yields an equitable distribution of SLIHC throughout the State, to ensure the participation
9 of qualified non-profit organizations, to implement such special priorities or demonstration programs
10 contained in a notice of credit availability, request for proposals and/or other agency guidance, and to
11 advance coordinated investments by State, federal, and local governmental partners.

12 (2) The division also reserves the right, in its sole discretion, to:

13 (i) assign additional scoring points as set forth in Section 2040.3 herein to the extent a
14 project addresses HCR's underwriting standards, which may include an evaluation of project
15 market support, operating economics and/or plan of finance, and/or design standards, as set
16 forth in a request for proposals, design guidelines and/or other agency guidance; and

17 (ii) exclude a project from consideration for funding if the division determines that the
18 project's underwriting and/or design proposal negatively impacts prospective occupants and/or
19 the community.

20 (3) Notwithstanding the threshold eligibility review criteria and/or the scoring criteria set forth
21 herein, the division, in its sole discretion, may:

1 (i) deny any request for an allocation of credit to a project irrespective of the outcome of
2 its threshold eligibility review and/or the project scoring if such a request is either inconsistent
3 with the housing objectives of the Regional Economic Development Council applicable to the
4 area in which the project is located, and/or presents issues not addressed in the threshold
5 eligibility review or the project scoring which may pose excessive risks, costs and/or negative
6 impacts to the project, its prospective occupants and/or the community; and

7 (ii) allocate credit to a project irrespective of its scoring if such an intended allocation is in
8 compliance with the Code, in furtherance of the State's housing goals as may be set forth in a
9 request for proposals and/or other agency guidance and is determined by the division to be in
10 the interests of the citizens of the State of New York.

11 (g) *Set-Asides*. For the purpose of implementing the State's housing goals, including the housing
12 objectives of the Regional Economic Development Council applicable to the area in which the project
13 is located, the division reserves the right to set aside credit, including, but not limited to, set-asides for
14 housing in well-resourced areas, preservation projects, including such project located in rural areas,
15 and supportive housing projects.