



CONNECTICUT
HOUSING FINANCE
AUTHORITY

The Key To Affordable Housing

Low-Income Housing Tax Credit (LIHTC) Program

Guideline

2019

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PREFACE

This Guideline is to be used by applicants requesting funding through the Low-Income Housing Tax Credit (“LIHTC” or “tax credit”) Program. This Guideline supplements the existing laws and rules prescribed by the Internal Revenue Service (the IRS) in Section 42 of the Internal Revenue Code (the “Code” or IRC) and related regulations. It is also to be used together with the Glossary of Terms and the PowerPoint presentation and materials distributed at the annual Overview Session as a supplement to the Procedures of the Connecticut Housing Finance Authority (CHFA or the “Authority”), Qualified Allocation Plan (QAP), CHFA/DOH Consolidated Application (the “ConApp”), Multifamily Design, Construction and Sustainability Standards, and the CHFA Multifamily Rental Housing Program Guideline. If any statement(s) in these documents conflict with the laws governing the LIHTC Program, those laws take precedence. The materials should not be relied upon solely or as a substitute for an applicant’s own tax or legal counsel or interpretation of laws relating to the LIHTC Program. Applicants are ultimately responsible for providing the information necessary for the determination of the development’s eligibility and compliance under the LIHTC Program.

I. Background

The IRC §42 Low Income Housing Credit Program was enacted by Congress as part of the Tax Reform Act of 1986 to encourage new construction and rehabilitation of existing buildings as low-income rental housing for households with incomes at or below specified income levels. Since its inception, the LIHTC Program has helped construct and rehabilitate a significant portion of the nation’s affordable housing stock.

The LIHTC Program works as follows: The IRS allocates federal tax credits to state housing finance agencies like CHFA to administer the program. CHFA awards tax credits to eligible developers of affordable housing developments through a competitive application process. The developers use the equity capital generated from the sale of the tax credits to lower the debt burden on their tax credit properties, making it easier to offer lower, more affordable rents. Investors purchase the tax credits to lower their federal tax liability.

Developers typically structure LIHTC developments as limited partnerships or limited liability companies providing ownership to the investors. This structure allows the investors to receive tax credit benefits and passive losses.

Under IRC §42(m)(1), state housing credit agencies must develop a QAP that is approved by the governmental unit having jurisdiction over the state; CHFA’s QAP is approved by the Governor. The QAP must have the following characteristics:

1. Identifies the selection criteria to be used for determining housing priorities that are appropriate to local conditions. The selection criteria must include project location, housing needs characteristics, project and sponsor characteristics, tenant populations with special needs, public housing waiting lists, tenant populations of individuals with children, projects intended for eventual tenant ownership, the energy efficiency of the project, and the historic nature of the project.

2. Gives preference to projects serving the lowest income tenants, for the longest periods, located in qualified census tracts, and which will contribute to a concerted community revitalization plan.

Developers must commit to set-aside a certain percentage of units, deemed qualified units that are affordable to households earning at or below specific income levels. There are three set-aside options, including an Income Averaging set-aside that was made possible by the 2018 Consolidated Appropriations Act:

- 20-50 Test: A minimum of 20% of the units must be affordable to households earning at or below 50% Area Median income (AMI);
- 40-60 Test: A minimum of 40% of the units must be set aside for households earning at or below 60% AMI; and
- Income Averaging Test: A minimum of 40% of the units must be set aside for households whose qualified incomes on average do not exceed 60% AMI. Qualified units can have a set aside of 20%, 30%, 40%, 50%, 60%, 70% or 80% AMI.

The 9% LIHTCs are awarded based on an annual competitive funding round. Currently, the 4% LIHTCs are awarded through a non-competitive, ongoing, open-application process. Applicants are advised that the 4% LIHTCs may become subject to a Notice of Funding Availability (NOFA), which will be duly announced on CHFA's website if applicable. Applicants seeking 4% LIHTCs as part of a Department of Housing (DOH) competitive funding round application will be subject to the DOH rating and ranking process.

The amount of tax credits awarded to a development may not exceed the amount CHFA deems necessary for the development's financial feasibility and its viability as a low-income housing development throughout the compliance period.

CHFA reserves the right to request change(s) to the applicant's submission in a manner that promotes CHFA's housing goals, specific market needs and/or program objectives. Furthermore, CHFA may make adjustment(s), with notification to the applicant, to carry out its housing goals.

II. Utilizing the Income Averaging Minimum Set-Aside (MSA)

The Consolidated Appropriations Act of 2018 establishes income averaging as a MSA election for LIHTC developments. Utilization of income averaging requires CHFA consent and must meet the requirements outlined below. At this time the IRS has not yet issued guidance regarding the implementation of income averaging; therefore, these guidelines are subject to change and may be superseded at any time by IRS guidance.

1. General Requirements for All Income Averaging Proposals:
 - a. Proposals must include a detailed explanation of why income averaging is being proposed, and owners must agree in writing to the compliance implications;
 - b. Proposals will not be accepted without evidence of consent by the Syndicator, Management Agent and Lender of the use of income averaging;

- c. Owners are encouraged to consider underwriting to an average less than 60% AMI (e.g. 55% AMI) to provide additional flexibility when meeting the income averaging set-aside test;
 - d. Owner/ Management Agent must demonstrate capacity to administer the compliance components specific to income averaging including adequate written policies and compliance software;
 - e. Owner must approve and document any changes to unit designations. Proposal must include written policies and procedures for managing unit designations throughout the extended use period;
 - f. The development must establish unit parity in regard to bedroom size by income band (i.e. larger units cannot all be targeted to households in higher AMI bands);
 - g. Owners of multi-building developments must agree to elect to treat all the buildings as one project when completing Section 8b on Form 8609;
 - h. The AMI bands must be supported by a market study; and
 - i. All LIHTC rents should be at least 10% below market rents.
2. Additional Requirements for Developments Already Approved or Awarded:
- a. CHFA will not consider any proposal that includes an increase to 9% LIHTCs;
 - b. Depending on the magnitude of the proposed changes, reconsideration by the CHFA Board of Directors may be required, and/or the Mortgagor may incur additional fees;
 - c. The proposal must maintain the requirements of any CHFA/DOH funding award;
 - d. A revised Consolidated Application and associated exhibits may be required;
 - e. Sufficient time must be allowed for CHFA to underwrite the new proposal; and
 - f. If the use of income averaging triggers higher fees for compliance monitoring, the increase will need to be incorporated into the project budget.
3. Additional Requirements for Developments that have Already Initial Closed:
- a. Proposals will only be considered for Developments that have not yet executed form 8609;
 - b. The proposal must create additional Qualified Units and allow for a reduction to scarce State resources (e.g. funding from CHFA, DOH, or another State agency);
 - c. The proposal must continue to meet the requirements of Section 42 and Section 142 of the Internal Revenue Code; and
 - d. Set-aside elections made in the Extended Low-Income Housing Commitment executed at initial closing and recorded on the land records may need to be amended.
4. Additional Requirements for Developments that have Received a 9% LIHTC Award:
- a. The proposal must include all the items for which points were awarded, including maintaining sufficient levels of 25% AMI units and unrestricted market rate units;
 - b. 25% AMI units may be counted at 30% AMI for purposes of income averaging, but the ELIHC shall require those units to be restricted to households at or below 25% of AMI; and
 - c. The proposal must continue to meet the requirements of Section 42 of the Internal Revenue Code.
5. Additional Requirements for Developments with Financing Approved by the CHFA Board of Directors but Not Yet Initial Closed:

- a. The proposal must create additional Qualified Units and allow for a reduction to scarce State resources (e.g. ITA, DOH, etc.);
 - b. The proposal must maintain QAP points items (if applicable); and
 - c. The proposal must continue to meet the requirements of Section 42 and Section 142 of the Internal Revenue Code.
6. Additional Compliance Considerations for Owners/ Management Agents:
- a. The deadline to meet the MSA remains the same. The owner must certify to CHFA that the income averaging MSA was satisfied on 12/31 of the second year the project was placed in service;
 - b. Once a MSA is selected on the 8609, it is irrevocable;
 - c. Out of compliance Qualified Units (e.g., over-income tenants, failed physical inspection, and failed student) may not be included in the calculation for the income average of a project;
 - d. If two or more Qualified Units become over income at the same time, the owner must make a reasonable effort to designate the next available market rate unit at the lower AMI of the two units. Owners must carefully document all decisions made with respects to the Next Available Unit Rule in properties employing the income averaging MSA;
 - e. Projects utilizing the income averaging MSA that have 100% LIHTC Qualified Units will not be considered for the recertification waiver; and
 - f. In addition to maintaining the development’s application fraction, unit parity must be maintained throughout the compliance and extended use period with regards to bedroom size by income designation.

III. Pre-Application Meeting

For the 2019 application year, applicants are invited and encouraged to attend a pre-application conference (“Conference”) with CHFA staff. Effective for the 2020 application year and beyond, a Conference will be required of all applicants. Conferences can be scheduled anytime up to 30 days before the application due date for a funding round, if applicable. Beginning for the 2020 application year, Conferences must take place prior to a SharePoint site being created. DOH staff will be included in the Conference if applicable.

Topics to be discussed at the Conference may include:

- The proposed development team
- How the proposed plan aligns with the QAP
- How the proposed plan aligns with CHFA Procedures and Guidelines
- Status of zoning
- Status of environmental testing and any environmental issues

CHFA intends to conduct the Conferences as confidential conversations. Designated CHFA staff will discuss the proposal with the intention of providing information and guidance. If available, applicants can submit or bring to the Conference a draft pro-forma including proposed budget, rent mix and operating expenses, and any technical services items that are available. Applicants are encouraged to submit material in advance for the most productive discussion.

Proposals will not be fully underwritten or scored for the Conference. Any feedback provided by CHFA staff is contingent upon actual submissions and may be subject to change based on published revisions to Procedures, Guidelines and/or the QAP.

IV. Submission and Eligibility

Each applicant shall submit to CHFA a complete LIHTC application package, which includes a completed current ConApp, all required attachments, and an application fee as reflected in the CHFA Multifamily Underwriting Standards Summary section of the Multifamily Rental Housing Program Guideline. Application due dates will be posted on CHFA's website as well as other media. Applications shall be evaluated and scored based on the criteria outlined in the QAP. Additionally, applications will be evaluated based on financial feasibility, development team capacity, demonstration of need, and readiness.

Applicants for tax credits will be evaluated on past performance and compliance on transactions with CHFA, DOH, HUD and other government funding agencies. Categories to be reviewed include but may not be limited to Meeting Timelines, Deviation from Proposed Costs, Executing Proposals as Submitted, Tax Credit Compliance, Funding Program Compliance, and Satisfactory Operation of Existing properties. The determination of applicant capacity and acceptance of an application for tax credits is at the sole discretion of CHFA.

For CHFA transactions:

- Meeting Timelines will be measured as follows:
 - Proposed dates listed in the Consolidated Application will be compared to actual dates provided at Carryover/42M letter issuance
 - Performance will be tracked against dates in the construction contract and partnership agreement provided by the owner at initial closing
 - CHFA will review construction observation reports provided during construction
- Deviation from Proposed Costs will be measured as follows:
 - Budgeted costs proposed at initial closing will be compared to the cost certification
 - Proposed hard costs will be compared to actual construction contracts
- Executing Proposals as Submitted will be measured by a review of material changes to awarded or approved submissions in areas included but not limited to:
 - Design integrity
 - Affordability mix
- Tax credit compliance will be verified based on reports from CHFA's Authorized Delegate
- Compliance with requirements of other CHFA funding programs and/or funding programs administered by CHFA including but not limited to HTCC, SSHP, 9% points award commitments, etc.
- Satisfactory operation of existing properties

The applicant is required to provide contact information for other government funding agencies or lenders worked with during the past three years. CHFA may request information on an Applicant's past performance from other governmental funding agencies or lenders.

CHFA may also take into consideration information discovered through its own due diligence. All information will be discussed with applicants at the pre-application conference. Applicants are eligible to apply for 9% LIHTC, 4% LIHTC and Tax-Exempt Bonds (TEB), or Hybrid 9% LIHTC and 4% LIHTC with TEB if they meet the CHFA requirements as specified in CHFA's Program Eligibility Requirements: Delinquent or Non-Performing Applicants and any additional specific requirements described in the QAP or applicable NOFA. Note that in order to apply for Hybrid development financing, an applicant must request a meeting with CHFA to apply. Please refer to the CHFA website for requirements noted in CHFA's [Board of Directors Policy Statements](#), CHFA [Procedures](#), and [Multifamily Rental Housing Program Guideline](#).

If an applicant's 9% LIHTC application was unsuccessful in a previous funding round, the applicant must contact CHFA to discuss its plans regarding the application and any contemplated future submission.

A complete application submission includes and/or addresses:

1. A credible financing plan, which at a minimum includes the following:
 - a. The total projected development cost, including any land acquisition cost;
 - b. Development costs for construction, soft costs, developer fees, land, customary capitalized reserves, and equity syndication. In making a determination of cost reasonableness, CHFA shall utilize typical industry data and standards as may be appropriate for each development, based on the size, complexity, difficulty and location;
 - c. Applications for 9% LIHTC require a credible financing plan in order to be presented to CHFA's Board of Directors for approval of an award.
 - i. Clear identification of each financing source, including the terms of any proposed financing and the financing source(s) from which the applicant expects to receive funding other than resources sought from CHFA and/or DOH for construction or permanent financing; and copies of commitment letters and/or letters of interest that set out terms and conditions for each proposed financing source. Applications are scored, in part, on the level of commitment from funders. Lack of funding commitments and/or letters of interest may make an application ineligible for funding because they support a development's credible financing plan.
 - ii. Applicant shall submit letters of interest (no less than two) from the development's potential syndicators.
 - iii. CHFA's requirement for a credible financing plan precludes the submission of both a 9% LIHTC application and a concurrent 4% LIHTC application for the same development.
2. There must be demonstrated experience of the sponsor or general partner, either principal or entity, in successful LIHTC development(s). The applicant must be part of a qualified development team with previous experience in developing multifamily housing developments. All qualified development team members are subject to CHFA's Program Eligibility

Requirements: Delinquent or Non-Performing Applicants. Additionally, all qualified development team members must be prepared to demonstrate capacity to undertake the development proposed in the application ensuring resources are in place for timely completion. A qualified development team consists of the following team members:

- a. Developer/Owner/Sponsor: Three (3) years relevant experience or three (3) successful developments, as evidenced in the ConApp. In the case of a non-profit entity, the experience of its development leadership, the majority of its Board of Directors or its Development Consultant may be considered. In the case of a public housing authority, the experience of the majority of the Board of Commissioners, or the experience of its executive director may be considered. In this case, the housing authority may be considered the “sponsor” and its executive director, its principal;
 - b. Architect: Please see the [Construction Guideline: Project Planning & Technical Services Review](#);
 - c. General Contractor: Please see the [Construction Guideline: Project Planning & Technical Services Review](#);
 - d. Management Agent: Please see the [Management Agent Approval Requirements](#); and
 - e. Consultant (optional qualified development team member): three (3) years relevant experience or three (3) successful developments.
3. Each applicant and its contractors, subcontractors, and management agents shall agree to comply with:
 - a. Federal and State executive orders, statutes, regulations, and other requirements of law relating to affirmative action and equal employment opportunity including the requirements that §4a-60 of the CGS imposes on those who enter into contracts to which the State is a party; and
 - b. CHFA’s goals and requirements relating to equal employment opportunity, affirmative fair marketing, and other affirmative action programs.
 4. The sponsors and applicants of the developments must evidence commitment to undertake strong affirmative measures to ensure that the activity funded promotes regional economic, social and racial integration and the integration of persons with disabilities.
 5. Each applicant pledging to include supportive housing units in its development must adhere to the Supportive Housing Guideline and the related Quality Assurance Monitoring of such units.
 6. Successful applicants may request a change in a development’s qualified development team in exceptional circumstances and such team member substitution is subject to review and approval by CHFA. If an applicant was awarded points for the qualified development team member (for example, CT-based general contractor or women or minority participation in the ownership,

development, or management of the project), such points may be lost, the application re-scored, and credits potentially re-evaluated and rescinded.

Please check the specific NOFA announcements on the CHFA website for the requirements of each NOFA.

V. Alternative Financing Structures

CHFA reserves the right to consider alternative financing structures that reduce the need for scarce resources. One alternative is the use of separate, but simultaneous, financing plans utilizing both 9% LIHTCs and 4% LIHTCs and tax-exempt bonds. In determining the acceptance of such alternative financing structures, CHFA will consider, among other things:

1. Experience in successfully completing the proposed alternative financing structure and organizational depth and capacity to undertake this complex transaction
2. How the Applicant proposes to separate the development and complete the transactions simultaneously
3. Ability to adhere to strict timelines
4. Demonstration of cost savings, increased unit production, and a reduction in the volume of 9% LIHTCs or other scarce resources

If an applicant feels they may not meet the experience criteria outlined above, CHFA may consider the experience of a development partner. This partner must be included in the ownership structure of the development.

To be eligible for consideration in the 9% LIHTC Round, all proposals must demonstrate a credible financing plan without the use of contingent commitments of available resources. Therefore, the 9% LIHTC portion of a proposed hybrid transaction must be able to stand on its own and advance independently without requiring the approval of the 4% LIHTC portion to move forward as proposed (i.e., the 9% portion cannot be a piece of a larger building).

Applicants should submit a single ConApp reflecting the 9% LIHTC request for the transaction. The ConApp for the proposed 4% LIHTC portion of the transaction may be included in the submission for informational purposes. A commitment of tax-exempt bond financing and 4% LIHTC will not be considered without an executed 42(m) review and letter.

The 9% LIHTC application will be rated and ranked based solely on the details of the 9% portion of the development with the exception of points for Credits per Qualified Bedroom. If the 4% LIHTC ConApp is provided with the 9% application, Credits per Qualified Bedroom will be calculated based on the total number of qualified bedrooms in the entire development, and the sum of the 9% and 4% tax credit requests.

CHFA will consider the acceptance of alternative financing structures following the announcement of the 9% LIHTC awards.

VI. Application Submission

Applications must be complete upon submission. Incomplete applications will result in a loss of points or a failure to meet application threshold criteria as cited in the QAP, and the application can be rejected.

CHFA reserves the right to contact applicants for clarifying information and to communicate with applicants during the review period to ensure a complete and thorough review.

VII. Application Review and Processing

CHFA will allocate LIHTCs based upon the selection criteria and application ranking processes set forth in the QAP, and other NOFA if applicable.

1. Credit Availability:

a. 9% LIHTC

Applications for 9% LIHTCs are subject to the state's tax credit ceiling allotment, and as such, are allocated by CHFA through highly competitive annual funding rounds.

b. 4% LIHTC

4% LIHTC allocated to any development does not affect the state's tax credit ceiling allotment. However, developments must satisfy the requirements for allocations under the QAP, CHFA Procedures, Policies, and the Code. Typically, CHFA issues the TEBs for developments that receive 4% LIHTC allocations. Any proposed development to be funded with CHFA TEBs is presented to the CHFA Board of Directors for approval. However, if another governmental unit will issue the TEBs, CHFA will review the underwriting for the TEBs on behalf of the State of Connecticut's Office of Policy and Management. In such instances, CHFA will issue a memo verifying compliance with the CHFA Multifamily Underwriting Standards for the State Bond Commission.

2. Application Classification:

The 9% LIHTC applications are separated into two classifications: Public Housing and General. CHFA's Board of Directors may provide consideration for additional classifications pursuant to the QAP. Allocations for these additional classifications may be awarded at times other than during a competitive round.

3. Application Criteria:

a. All applications must:

- i. Meet at least one of the development location criteria as established in the QAP;

- ii. Adhere to any Policy, Procedural, and administrative requirements of CHFA as outlined in the QAP; and
 - iii. Satisfy all threshold criteria.
- b. An applicant may request capital funding or rental subsidy from DOH, if available. In such instances, DOH or its designee will review the applicant's request after submission of the ConApp. During the application review period, if DOH or its designee determines that an applicant is to receive a DOH commitment letter, DOH or its designee will provide that letter to both the applicant and CHFA.

4. Opportunity Characteristics:

CHFA encourages developing non-age restricted housing in areas of opportunities. For additional information, please refer to the Opportunity Characteristics Guideline and the Opportunity Characteristics Locational Guide Map on the CHFA website.

5. Rental Affordability:

For 9% LIHTC applications, points awarded for supportive housing and households at or below 25% of the Area Median income (AMI) will be based on the percentage of qualified units; households above 25% and at or below 50% AMI and mixed income housing will be based on the percentage of total units that serve the respective populations.

6. Underwriting Criteria:

Each LIHTC application will be reviewed for financial feasibility, including reserves. For 9% LIHTC developments proposing to carry an amortizing loan, operating income must cover expenses, including debt service, during the compliance period and must not be funded by pre-funded reserves. Proposals with high debt service coverages may be required to increase loan amortizing amounts, increase deferred developer fee, or both in order to increase development funding sources and minimize tax credit allocation amounts.

Generally LIHTC equity proceeds cannot be used to establish operating reserves anticipated to be drawn down on a regular and sustained basis to meet expenses integral to the operation of the proposed development. As such, these reserves are providing protection due to unforeseen circumstances in which rent, rent subsidy programs or other sources cannot pay for expenses and debt service. Reasonable reserves to mitigate real estate risk or to fund possible short-term deficits beyond year 15 may be acceptable.

a. Operating Budget:

i. Rent Restrictions

The proposed development must meet the minimum income occupancy and rent restriction requirements of the Code. Refer to the Maximum Affordable Gross Rent and Income Limits

on the CHFA's website. The applicable gross rent is associated with the fewest number of persons per household for the designated bedroom size. These gross rents include all utilities with the exception of telephone, television, and internet charges. The applicable utility allowance amount must be subtracted to arrive at the maximum net affordable rent.

ii. Income and Expense Assumptions

When reviewing the operating budget and the 15-year cash flow projections, CHFA will review the financing institution's assumptions for reasonableness and may seek additional information. Refer to the CHFA Procedures and the Multifamily Underwriting Standards Summary section of the Multifamily Rental Housing Program Guideline for income and expense assumptions.

b. Development Budget:

i. Letter of Attestation

The application budget shall be accompanied by a letter from the applicant's tax attorney/accountant, if available, stating that s/he has reviewed the budget and that s/he attests to the calculation of eligible basis and sources of funds.

ii. Qualified Census Tract (QCT)/Difficult Development Areas (DDA)

If the development is within either a HUD designated QCT or DDA, the eligible basis may be increased by 30% (Basis Boost). These HUD designations are included in the ConApp package and on the HUD website.

iii. Developer's Fee

To the extent economically feasible, the developer's fee shall be based on a sliding scale indicated in the CHFA Procedures up to 15% of the Total Development Cost (as defined in CHFA's LIHTC Glossary of Terms). The developer's fee shall be inclusive of non-profit overhead and exclusive of land, building and syndication fees, capitalized reserves, and pre-development financing costs.

iv. Contractor's Profit, Overhead and General Requirements

CHFA will allow a range of acceptable general requirements, contractor's profit and overhead maximums depending upon the complexity of the construction of the development. For specific ranges refer to the CHFA Procedures and Construction Guideline: Project Planning and Technical Services Review. CHFA will review these line items for all developments.

v. Construction Cost

The construction costs will be reviewed for overall reasonableness. CHFA will rely on various databases such as RSMeans® Building Construction Cost Data and CHFA's historical construction data, as well as evaluating developing labor and materials market conditions. At any time that project costs increase from the budget proposed at the time of application, CHFA shall require the applicant to mitigate and reduce such project cost increases. Efforts to reduce costs may include competitive bidding and/or value engineering or both as may be required by CHFA. If required, competitive bidding for a General Contractor or project value-engineering should be completed prior to the applicant's execution of a Carryover Allocation Agreement or receipt of an Authority-issued 42(m) letter.

vi. Consultant's Fees

All consultant fees will be paid from the proceeds of the developer's fee. Consultant is defined in CHFA's LIHTC Glossary of Terms.

vii. Field Observation

All LIHTC developments must provide construction observation reports to CHFA on a regular basis as described in CHFA's current Pre-Construction Guidelines. The field observer may be an architect from the development design firm, or may be another CT-licensed architect retained for this purpose.

viii. Syndication Costs

The costs of syndication shall not exceed a rate acceptable to CHFA based on fees as a percentage of syndication proceeds. Syndication costs include all direct and indirect costs incurred in securing syndication proceeds (i.e. syndicator legal costs). Syndicator required asset management fees may only be payable from available cash flow after required debt service.

ix. Construction Contingency

Up to 100% of the amount budgeted for construction contingency may be included as eligible basis as supported by the Letter of Attestation.

CHFA will take into account the combination of tax credits with other subsidies or federal, state and governmental programs, including but not limited to, the Section 8 Project-Based Vouchers, Preservation and Recapitalization Program, Federal Historic Tax Credit Program, Low-Income Housing Preservation, Resident Homeownership Act, etc., when allocating credits. Additionally, CHFA will allocate credits in accordance with any federal law or procedures (i.e. HUD Revised Subsidy Layering Guidelines), where appropriate.

VIII. Application Approval and 9% Reassessment Process

1. Approved Applications - If an application is approved by CHFA's Board of Directors, notification is sent to the applicant, and a Tax Credit Reservation is issued.
2. Unsuccessful Applicants - If an application does not receive a LIHTC award, the application is terminated. An applicant may request a debriefing to be provided information to understand the action and the reasons for CHFA's findings.
3. Reassessment Process - At the conclusion of CHFA's Board of Director's adoption of resolutions confirming the 9% LIHTC ranking process, an applicant may request that CHFA reassess its decisions related to the acceptance, scoring, or ranking of its application. The request for reassessment shall be submitted within 90-days of CHFA's Board of Director's funding round approval.

The request for reassessment must specifically identify in detail each issue sought to be challenged. The applicant's justification for the reassessment must be based on the documents filed with the original application. No applicant may request a reassessment of the evaluation and scoring of another applicant's application.

If the request for reassessment relates to the amount of housing tax credits recommended to be allocated, CHFA will provide the applicant with the application underwriting upon written request made by the applicant pursuant to the Freedom of Information Act.

The applicant's request for reassessment must be accompanied by Exhibits 6.3 (Development Budget) and 6.5 (Sources of Funds) of the ConApp (updated as necessary at the time of the request for reassessment) to reconfirm the development's balanced sources and uses of funds. No changes from the original submission are otherwise permitted. The request for reassessment shall be submitted to CHFA's Executive Director. The reassessment will be conducted by senior staff persons who were not directly involved in the evaluation of the application.

The applicant shall:

1. Submit a request for reassessment, which must be accompanied by a \$5,000 reassessment fee.
2. Understand that in the event that a change is warranted and such change(s) result(s) in an allocation of 9% LIHTCs, the reassessment fee will be fully refunded. However, the reassessment fee will not be refunded if a change in the overall score does not result in an allocation of 9% LIHTCs.
3. Meet all applicable deadlines and timeframes. If a reassessment results in the applicant receiving a 9% LIHTC award (or additional tax credits), the applicant is responsible for meeting all elements of its proposal within the specified timeframe.

CHFA shall:

1. Review the issue presented for reassessment;
2. Determine whether the reassessment request is consistent with the criteria as well as other aspect(s) of the QAP, policy objectives, Procedures, Guideline, and any administrative requirements of CHFA in place at the time of application; and
3. Determine whether a change in the overall scoring is warranted.
4. If an overall change is warranted, CHFA's Board of Directors will be informed. At the discretion of CHFA's Board of Directors, reassessments may result in a forward commitment of 9% LIHTCs in accordance with the QAP and the policy objectives, Procedures, Guideline, and administrative requirements of CHFA. A successful reassessment will not result in the cancellation of previously approved reservations.

IX. Issuing the Tax Credit Reservation – 9% Only

Upon the approval of CHFA's Board of Directors, the applicant will receive a tax credit reservation setting forth the annual credit amount and, if applicable, any additional requirements or concerns referenced in the Board Resolution for the reservation of LIHTCs that must be satisfied prior to the execution of a Carryover Allocation Agreement. This reservation must be executed by the applicant and submitted to CHFA with the appropriate Tax Credit Servicing Fee. The reservations will be issued at the end of each funding decision period to all approved applicants.

1. Tax Credit Reservation

The tax credit reservations will be awarded according to ranking within each classification based upon the credits available for the particular funding decision period.

2. Carryover Allocation Agreement/IRS Form 8609 Low-Income Housing Credit Allocation and Certification ("8609")
 - a. LIHTC Allocations will be made by CHFA with an 8609. Developments placed-in-service during the year of the Tax Credit Reservation will receive IRS Form(s) 8609. When a 9% applicant is not able to complete a development and place it in service by the end of the year in which a tax credit award is made, a Carryover Allocation Agreement may be requested to allow the applicant two (2) years to meet these requirements. This request should be no later than the 1st of November of the year of the tax credit reservation and should include the following:
 - i. The applicant's updated Consolidated Application;
 - ii. 100% complete plans and specifications;
 - iii. The applicant's statement of material change;

- iv. Carryover data sheets, sent by CHFA as blank forms to be completed by the applicant, to include partnership information, a property roster, a financial summary, a subsidy layering checklist, if necessary, and an updated project schedule.
- b. By December 15 of the allocation year and not later than year-end, CHFA will issue a Carryover Allocation Agreement to applicants with credit reservations that have met the submission requirements as determined by CHFA.
- c. In order to be eligible for a Carryover Allocation, the applicant must:
 - i. Form its ownership entity (i.e. file a certificate of limited partnership or other organizational document with the Secretary of the State);
 - ii. Maintain development financial feasibility as determined by CHFA;
 - iii. Have any material change accepted by CHFA;
 - iv. Provide all requested information as determined by CHFA; and
 - v. Remit the balance of the Tax Credit Servicing Fee.

3. Ten Percent Test

Within 12 months of an Executed Carryover Allocation Agreement, an applicant must demonstrate that the applicant has spent or incurred at least 10% of the development's reasonably expected basis. A certification prepared by an independent certified public accountant or an attorney must be submitted documenting compliance with the requirements of Section 1.42 – 6(c) of the Code.

For purposes of meeting the 10% test:

- a. CHFA's Tax Credit Servicing Fee is not includable in the development's basis;
- b. For Developer's Fees to be included in basis, the applicant must provide reasonable and adequate documentation of the services for which the fee has been paid and accrued;
- c. Reasonable construction interest costs will be recognized by CHFA; and
- d. The schedule of project costs must specify those costs included in the development's basis and must be accompanied by an independent certified public accountant's audit report on the schedule. Such audit must be conducted in accordance with generally accepted auditing standards and the Independent Auditor's Report must be unqualified.

X. 4% and 9% Transactions

1. Time Requirements

It is the owner's responsibility to manage all timing requirements to advance a development proposal in a timely manner; achieving a closing; and managing the construction process to achieve the placed-in-service target date. Owners that fail to adequately manage these time requirements may be subject to a rescission of a tax credit allocation. Owners should be proactive and provide regular timing updates to CHFA especially if there are anticipated delays that are out of the direct control of the owner.

In instances where there are unforeseen timing delays, prior to closing or during the course of construction, an owner may request a voluntary allocation return and re-allocation of 9% LIHTCs. Requests for a re-allocation are considered in CHFA's sole discretion and for extraordinary and uncontrollable circumstances only.

When requesting this return and re-allocation, owners should be prepared to outline the circumstances of project delays as well as to identify and summarize their active steps taken: 1) to anticipate and prevent the delay from having occurred; and 2) to react to unforeseen events once they occurred.

Delays during the legal due diligence and financial closing process are generally considered foreseeable and owners should build adequate cushions into the development process timeline. Return and re-allocation requests resulting from placed-in-service requirements imposed by an owner or equity provider that are generally more restrictive than those required in Section 42 will not be considered.

A voluntary return and re-allocation of LIHTCs that includes a material change from the originally awarded proposal may be subject to approval by the CHFA Board of Directors.

It is the owner's responsibility to manage all timing requirements. Owners that fail to adequately manage these time requirements may be subject to a rescission of a tax credit allocation. Upon request, owners shall provide timing updates to CHFA and notify CHFA if there are any delays that are out of the direct control of the owner.

2. Cost Certifications

Upon a development's completion, the owner must submit General Contractor's and Mortgagor's-LIHTC Cost Certifications documenting the actual total project cost. For additional information, refer to the [CHFA Cost Certification Preparation Guideline](#) on the CHFA website.

3. Issuance of an 8609

The 8609 is used to obtain a housing credit allocation from CHFA. A separate 8609 must be issued for each building in a multiple building development.

CHFA will issue 8609(s) upon review and acceptance of the cost certifications. The amount of tax credits originally reserved will be reduced accordingly if the review of the certified costs shows the financing gap is less than the one originally projected.

For developments that were awarded 9% LIHTC, the tax credit amount will generally not change if the certified costs are higher than the estimated project costs, unless the owner applies for an additional allocation due to reasonable unforeseen cost overruns. Applicants that received an initial reservation of 9% LIHTC in a prior year and are seeking de minimis additional tax credits in a subsequent year must contact CHFA. At its sole discretion CHFA will determine if the request for additional reservation is considered de minimis. The applicant must demonstrate the capacity to secure an equity investment, satisfactory to CHFA. Additionally, the applicant must neither have changed any selection criteria nor made any significant modifications, as determined by CHFA, from the original application. If CHFA determines the request for additional 9% LIHTC reservation exceeds the de minimis level, CHFA may require the applicant to re-apply in a competitive round.

For 4% LIHTC, the final amount of tax credits may be greater than the original estimated amount, warranted by a final underwriting review by CHFA, if additional improvements were completed.

The final credit amount referenced in the 8609 is based upon the Tax Credit Percentages elected by the owner through a binding agreement, such as the Carryover Allocation Agreement, or established for the month when the building is placed-in-service. For developments financed with TEB, the owner may elect to set the Tax Credit Percentage as of the month in which the TEB are issued or at the time of a building's placement in service.

All outstanding fees must be received prior to the issuance of an 8609.

XI. Appraisal and Market Study

CHFA commissions independent, professional market study(ies) and appraisal(s), from an approved list of multifamily rental housing appraisers and market analysts maintained by CHFA, for all multifamily rental housing developments being considered for CHFA mortgage financing. For developments funded with LIHTCs without TEBs or CHFA financing, only a market study is required prior to the issuance of the 42(m) letter for 4% LIHTCs or the issuance of the Carryover Allocation Agreement for 9% LIHTCs. Applicants shall make full non-refundable payment in advance.

XII. Compliance Monitoring

All qualified LIHTC developments are subject to review pursuant to CHFA's compliance monitoring procedures established in the QAP and all other applicable agreements, including Quality Assurance Monitoring as described in the [Supportive Housing Guideline](#), should the development include supportive housing units.

1. Failure to comply with the compliance monitoring procedures is an event of default and treated as noncompliance.
2. Failure to provide supportive housing units or any other development feature for which points were awarded in a competitive round is an event of default and treated as noncompliance.

3. Subsequent to the time of allocation, all applicants/owners shall execute an Extended Low-Income Housing Commitment (ELIHC) with CHFA and record it in a priority position on the land records prior to the end of the first year of the tax credit period. In the case of developments for which CHFA is providing a mortgage loan, the ELIHC shall be executed at the time of the initial loan closing. The ELIHC will include a provision requiring all liens on the property be subordinate to the low-income use restrictions. The ELIHC sets forth the number of low-income and rent restricted units in the development, the parameters defining a qualified tenant, the resale restrictions, the term that the units will remain qualified, the default and remedies governing the rent restricted units.
4. Should the development fail to place-in-service, CHFA will rescind the tax credits from the owner.
5. Refer to the LIHTC Compliance Reporting Requirements available on the CHFA website for additional requirements.

XIII. Changes in Subsidy or Financial Assistance

Frequently, developments may have the benefit of a project-based rental assistance contract to serve the state's lowest income population. In the event of the loss of project-based rental assistance during the 15-year compliance period, with the prior written approval of CHFA, units may revert to being occupied by individuals and families having an annual income not exceeding 60% AMI at such time. CHFA, at its sole discretion, shall grant such approval.

When reviewing an owner's request to change the terms of the transaction, CHFA will consider changes that address the unique circumstance(s) of each development. Factors that will be considered include, but may not be limited to, the needs of the existing residents; local residential market conditions; the availability of alternative funding resources; and the financial and physical sustainability of the development.

If an owner voluntarily elects to relinquish rental subsidies for the development, then the owner and development remain bound to serve the households at the AMI bands pledged in the original application and no relief is provided.

CHFA will consider requests for compliance/regulatory modification if resources used to provide supportive services are no longer available. If the cost to provide supportive services is being borne by the service provider and the resources to provide those services are no longer available, CHFA will consider requests to modify or change the scope or the level of services provided to residents based on the degree of available resources. These requests will be considered by CHFA on a case-by-case basis subject to CHFA's sole discretion.

Developments maintaining the cost of supportive services through the development's operating budget may also be eligible for compliance modification if operating costs outside of the control of the owner (for example, taxes, insurance, utilities, etc.) increase to the point of jeopardizing the financial sustainability of the overall development. Again, these requests will be considered based on the needs of the development and on a case-by case basis subject to CHFA's sole discretion.

Developments that agreed to establish a funding reserve or developer guarantee solely for the funding of the supportive services during the 15-year compliance period will not be eligible for compliance relief.

The loss of rental assistance and/or funding for supportive services units may allow owners to request for permission to rent to higher-income individuals and families as stated above. However, the loss of rental assistance will not allow the owners to terminate supportive services to residents.

XIV. Application and Tax Credit Servicing Fee Schedule

1. Application Fees

Refer to the CHFA Multifamily Underwriting Standards Summary section of the Multifamily Rental Housing Program Guideline for applicable application fees.

2. Tax Credit Servicing Fees

a. 9% LIHTC

Applicants must pay 25% of the Tax Credit Servicing Fee to CHFA with the return of the letter indicating acknowledgement of the reservation. The balance of the fee must be paid prior to the final execution of the Carryover Allocation Agreement. Adjustments to this payment schedule will be considered on a case by case basis and will be notated in the Reservation Letter and/or Carryover Allocation Agreement.

b. 4% LIHTC

Applicants must pay 25% of the Tax Credit Servicing Fee to CHFA upon the issuance of the 42(m) letter by CHFA. The balance of the fee must be paid at the earlier of the construction loan closing or the close of syndication. Adjustments to this payment schedule will be considered on a case by case basis, however, 8609s will not be issued until the fee is paid in full.

The tax credit servicing fee is nonrefundable unless the development fails to be placed in service and the owner enters into an agreement with CHFA to return the LIHTCs. CHFA reserves the right to impose additional fees at any time, for compliance monitoring or other purposes, to implement the requirements of the Code.

For additional information please refer to the LIHTC - Glossary of Terms, Supportive Housing Guideline, and the Current Multifamily Standards and Guidelines. Any questions may be sent via email to: multifamilydevelopment@chfa.org.