DHCD
Maryland Department of Housing and Community Development

National Housing Trust Fund Allocation Plan

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EQUAL HOUSING OPPORTUNITY

National Housing Trust Fund Allocation Plan
For Federal Fiscal Year 2016

The State of Maryland will receive $3,000,000 in National Housing Trust Funds (HTF) from the U.S. Department of Housing and Urban Development (HUD) for Federal Fiscal Year 2016 (FFY 2016), which runs from October 1, 2016 through September 31, 2017. It is expected that HTF will continue to be funded by HUD in future years.

The Maryland Department of Housing and Community Development (the "Department") is the State Agency that will administer HTF. The Department is required to ensure that the HTF Program is administered in compliance with all HTF requirements established by HUD. The policies below will govern the use of HTF funds administered by the Department for FFY 2016.

The Department is required to develop this HTF Allocation Plan, which will be included as a component of the State of Maryland's Consolidated Plan.

In addition to the State's policies outlined in this document, HTF Funds will be administered in compliance with all applicable Federal rules, including the Housing Trust Fund Interim Rule, published on January 30, 2015 and codified at 24 CFR Part 93, as well as HUD Notice CPD 16-07: Guidance for HTF Grantees on Fiscal Year 2016 Housing Trust Fund (HTF) Allocation Plans, published on April 26, 2016.

Introduction

The Department administers a variety of State and federal programs that finance the development of affordable rental housing. These programs include, but are not limited to, the Low Income Housing Tax Credit Program (LIHTC), the Rental Housing Financing Program (RHFP), which is a combination of the state-funded Rental Housing Program and the federally-funded HOME Investment Partnership Program, Rental Housing Works (RHW), and the Multifamily Bond Program (MBP). The Department may, from time to time, establish new development financing programs to advance its mission.

While there are variations between these programs based on the underlying source of funds, State and federal requirement applicable to specific funding sources, and State and federal policy goals, the Department seeks to align many of its administrative processes that accompany these programs. This alignment makes these programs more user-friendly and contributes to operating efficiencies for the Department and its partners, including owners, investors, and managers of properties financed by these various resources.

This NHT Program Allocation Plan will seek to align many of the Department's administrative processes as outlined in the attached 2016 Maryland Multifamily Rental Financing Program Guide (Draft) (Attachment A).

General Requirements

Priority Housing Needs of the State/Eligible Populations Served

The HTF Program will be used to increase and preserve the supply of decent, safe and sanitary affordable housing for extremely low-income (ELI) households, including homeless families.

Funds available through the HTF Program will be targeted to provide permanent rental housing to ELI households. The need for permanent rental housing for ELI households in Maryland is significant, with the latest estimates indicating that there are over 180,000 households in the State with incomes at or below 30% AMI, and 86% of these households pay in excess of 50% of their income for housing. Additionally, ELI households in Maryland have a high occurrence of disabilities and other special needs.

Income Level to be Served

The HTF Program will serve ELI households. ELI households are defined as households with incomes at the greater of:

- 30% of the applicable Area Median Income (AMI); or
- Households with incomes at or below the poverty line.

Method of Distribution

FFY 2016 HTF funds will be used to complement and in conjunction with on-going DHCD housing programs to leverage other project funding, make projects financially feasible and increase the number of ELI households served in state-funded projects. HTF funds may be used in projects utilizing Rental Housing Funds Program, (RHFP), Low Income Housing Tax Credits (LIHTC), Multifamily Bond Program (MBP), Shelter and Transitional Housing Grant Program (STHGP) and any other programs administered by the Department. HTF may also be used with projects receiving non-DHCD housing program funds such as other state, federal or private sources. HTF funds may be requested by a Sponsor as part of a project application or DHCD staff may, in consultation with a sponsor, propose the use of HTF funds during project review and underwriting.

The readiness of the proposed project to proceed with construction or rehabilitation activities will also be a critical factor in the determination of the allocation of HTF funds. DHCD will consider the status of other financing, the local approval process, and other relevant factors in establishing the readiness of a project to proceed.

Forms of Assistance

HTF funds may be used as broadly and flexibly as is permitted by federal regulations to address the unique underwriting needs of each project and the number of ELI tenants to be served. Forms of assistance may include:

- Equity Investments;
- Interest-bearing loans or advances;
- Non-Interest bearing loans or advances;
- Deferred payment loans;
- Grants; or
- Other forms of assistance approved by HUD.

Geographic Diversity

HTF Program funds will be available on a State-wide basis. Ideally, housing opportunities for ELI household will be reasonably dispersed across the state, allowing physical mobility based on a household's own needs and preferences, and in doing so, promoting social and economic mobility for those same households. Achieving this end requires that the state invest in improving neighborhoods that already serve low income residents and providing new housing options in historically less affordable communities that provide residents access to a broad array of jobs, services and amenities.
Eligible HTF projects will be required to comply with Site and Neighborhood Standards requirements as established in the HTF interim rule published by HUD (Attachment B). The site and neighborhood standards at § 93.150 apply to new construction of rental projects receiving HTF funds. In addition, all HTF properties must meet one (1) of the Community Context criteria as outlined in the 2016 Multifamily Rental Financing Program Guide (draft).

Affirmative Fair Housing Requirements

The State of Maryland has a compelling interest in creating fair and open access to affordable housing and promoting compliance with state and federal civil rights obligations. Fair Housing requirement apply to the full spectrum of housing activities including but not limited to outreach and marketing, the qualification and selection of residents and occupancy.

Eligible applicants must include a certification that the project will develop and implement an Affirmative Fair Housing Marketing Plan (AFHMP) using form HUD-935.2A.

To provide the greatest access to housing opportunities by Maryland's residents, all AFHMPs must include, at a minimum, the following provisions:

- Prohibit income requirements for prospective tenants under the Section 8 Tenant-based Assistance: Housing Choice Voucher program, VASH, HOME Tenant-based Rental Assistance or similar voucher programs;
- Eliminate local residency preferences;
- Ensure access to leasing offices for persons with disabilities;
- Provide flexible application and office hours to permit working families and individuals to apply;
- Encourage credit references and testing that take into account the needs of persons with disabilities, special needs or homeless families; and
- Give prompt written notification to any rejected applicant describing the ground for any rejection.

An owner of HTF-assisted rental housing must comply with the affirmative marketing requirements above, and adopt and follow written tenant selection policies and criteria that:

- Limit the housing to income eligible families;
- Are reasonably related to the applicant's ability to perform the obligations of the lease;
- Limit eligibility or give preference to a particular segment of the population if permitted in its written agreement with the grantee (and only if described in the grantee's consolidated plan) and preference is established in accordance with the requirements further detailed in this section;

- Do not exclude applicants with vouchers under the Section 8 Tenant-based Assistance: Housing Choice Voucher Program or HOME Tenant-based Rental Assistance; and
- Provide for the selection of tenants from a written waiting list in the chronological order of their applications, insofar as is practicable.

Tenant Selection

There must be a written lease between the tenant and owner of HTF-assisted rental housing for a period of not less than 1 year, unless a shorter period is mutually agreed upon. The lease may not contain any of the following provisions:

- Agreement to be sued;
- Treatment of property;
- Excusing owner from responsibility;
- Waiver of notice to be sued;
- Waiver of legal proceedings;
- Waiver of a jury trial;
- Waiver of right to appeal court decision;
- Tenant chargeable with cost of legal actions regardless of outcome; and
- Mandatory supportive services.

Eligible Applicants

HTF funds may be allocated to for-profit or non-profit organizations, or other entities which have the demonstrated financial capacity and experience to complete and meet ongoing compliance requirements.

Applicant Capacity

The capacity of the applicant for HTF Funds is critical to the successful development and continuing operation of the project. The Department will evaluate the members of the Primary Development Team based on their accomplishments with projects that are similar in size scope and complexity to the proposed project. The Primary Development Team consists of the Developer/Owner, the project's general contractor, architect and property manager. DHCD will also review the financial capacity of the Developer/Owner and Guarantor to determine if the Developer/Owner has access to sufficient working capital to carry the project through pre-development and/or unexpected challenges and the net worth sufficient to provide applicable guarantees of project completion and operations.

Project-based Rental Assistance

In the allocation of HTF Funds, the Department will provide a priority for projects with project-based rental subsidies for all of the HTF-assisted units in the project. Documentation must be provided to show that the project-based subsidies will be in place for the term of five (5) years with renewal provision. The project-based assistance may be federal, state, locally funded. Other forms of project-based assistance will be reviewed on a case by case request.

Duration of Affordability Period

HTF-assisted units must meet the affordability requirements for a period of 40 years, which begins at project completion. The affordability requirements will be imposed and recorded in accordance with State recordation laws. The affordability restrictions may be terminated upon foreclosure or transfer in lieu of foreclosure.

Leveraging

In the allocation of HTF Funds, the Department will provide a priority for projects which leverage non-Federal funding sources. For this purpose, non-Federal funding sources will include equity raised from the sale of Low Income Housing Tax Credits, as well as loans funded from the proceeds of tax-exempt bonds.

Eligible Activities

HTF funds may only be used for the following eligible costs:

- Development hard costs;
- Acquisition costs;
- Related soft costs; and
- Relocation costs.

Due to the limited amount of the FFY2016 HTF Program fund allocation, HTF funds will not be used for Operating cost assistance and operating cost assistance reserves at this time. The Department will consider this eligible cost in the future.

Performance Goals and Benchmarks

The Department will measure the progress of projects funded with HTF Funds in a manner that is consistent with the standards in the State's Consolidated Plan.

Underwriting Standards

All HTF-assisted projects must conform to the underwriting standards as outlined in the 2016 Multifamily Rental Financing Program Guide (Draft) as well as the following additional requirements specific to HTF:

- **Initial Rents and Utility Allowances:** The Department will establish maximum monthly allowances for utilities and services and annually review and approve rents proposed by HTF-assisted project owners;
- **Tenant Income and Over-Income Tenant:** Project owners must determine tenant eligibility by calculating the household's annual income using the two definitions of income, 24 CFR part 5.609 or the IRS Form 1040. Income determinations are conducted at initial occupancy and the project owner must re-examine each tenant's annual income each year during the period of affordability. For HTF units that also receive project-based rental assistance, annual income must be reexamined based on the rules applicable to the project-based assistance. HTF –assisted units continue to qualify as

affordable housing despite a temporary non-compliance caused by increases on the income of the existing tenants. When that occurs, grantees must make every effort to bring the units back into income compliance as soon as it is feasible; and

- **Fixed and Floating HTF Units:** In a project contacting both HTF-assisted and other units, the project owner will designate fixed or floating HTF units at the time of project commitment in the written agreement and the actual HTF units must be identified not later than the time of project completion. Fixed units remain the same throughout the affordability period and floating units are changed to maintain compliance with the requirements of this section during the affordability period.

Development Quality

PROPERTY STANDARDS

All projects that receive HTF Funds must comply with threshold requirements detailed in the 2016 Department's Multifamily Financing Program Guide (Draft) (Attachment A). All HTF – assisted projects must meet all applicable State and local codes, ordnances and zoning requirements. In the absence of those codes, the housing must meet the International Residential Code or International Building Code (as applicable). All HTF- assisted projects must meet the following requirements:

- The accessibility requirements of 24 CFR part 8, 28 CFR Parts 35 and 36; and 24 CFR 100-205 as applicable; and other improvements that are not required by the regulations or statute that permit use by a person with a disability;
- The energy efficiency standards established pursuant to Section 109 of the Cranston-Gonzalez National Affordable Housing Act;
- Where relevant, the housing must be constructed or rehabilitated to mitigate the impact of the potential disasters, in accordance with applicable State and local codes, ordinances, and requirements, or other requirements established by HUD.
- The Department will review and approve written cost estimates and ensure that construction contacts and work will meet the all applicable standards in accordance with the 2016 Multifamily Rental Financing Program Guide; and
- The Department will conduct initial, progress and final inspections to ensure work is done in accordance to work write-ups/ architectural specification in accordance with the 2016 Multifamily Rental Financing Program Guide.

In addition, all rehabilitation projects must meet the following standards:

- If the housing is occupied, it must be free of all life-threatening deficiencies;
- The Department will determine the useful life of major system through a capital needs assessment and require a replacement reserve when the useful life of systems is less than the affordability period
- The housing must meet the lead-based paint requirements at 24 CFR part 35;
- All housing must be decent, safe, sanitary, and in good repair as described at 24 CFR 5.703. HUD will establish the minimum deficiencies that must be corrected under the grantee's rehabilitation standards based on inspectable items and inspectable areas from the HUD

prescribed physical inspection procedures (Uniform Physical Condition Standards) pursuant to 24 CFR 5.705

Maximum Per-Unit Development Subsidy

The maximum per-unit development subsidy amount will use the 2016 Maryland HOME Maximum Subsidy Limits, based on bedroom size. These limits are:

Number of Bedrooms/Unit Size	**Maximum HOME Subsidy Limit**
Zero bedroom	$140,107
One Bedroom	$160,615
Two Bedrooms	$195,304
Three Bedrooms	$252,662
Four or More Bedrooms	$277,344

The Department will use existing HOME Program analysis procedures to determine actual HTF funding allocated to a project. The ratio of HTF units to total units will be proportional to the ratio of HTF funds used to total costs, not to exceed the maximum per-unit subsidy amount.

ATTACHMENT A

DRAFT #2 June 13, 2016

DHCD
Maryland Department of Housing and Community Development

Multifamily Rental Financing Program Guide

Attachment to Maryland Qualified Allocation Plan for the Allocation of Federal Low Income Housing Tax Credits

Attachment to the [insert date] Qualified Allocation Plan

Maryland Department of Housing and Community Development
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Overview and Policy Statement: The State Context

The last major update of the QAP and Guide in 2014 established a series of Priority Project Categories to limit the award of competitive Low Income Housing Tax Credits (LIHTC) and Rental Housing Program and HOME Program Funds together, the Rental Housing Financing Programs (RHFP). After reviewing the results of this approach over the past several years, DHCD has determined that a broader set of priorities is necessary to ensure the availability of important resources to all areas and populations in the State of Maryland (the State). Additionally, it has been determined that the established Priorities should serve to guide -- not limit -- competitive funding awards by DHCD. The scoring criteria outlined in this Guide provide incentives for developments that meet these Priorities.

Accordingly, with this 2016 update of the QAP and Guide, the DHCD has established the following set of priorities to guide the award of competitive funding:

1. **Family Housing in Communities of Opportunity**
2. **Housing in Community Revitalization and Investment Areas**
3. **Integrated Permanent Supportive Housing Opportunities**
4. **Preservation of Existing Affordable Housing**
5. **Elderly Housing in Rural Areas of the State Outside Communities of Opportunity**
6. **Housing for the Homeless**

The scoring criteria outlined in this Guide provide incentives for developments that meet these Priorities, with the greatest priority placed on incentivising the development of family housing in Communities of Opportunity.

The QAP and Guide were crafted after the consideration of public comments received from a wide range of housing partners, stakeholders, consultants, housing advocates and others during the review process.

In addition, in considering changes for the Guide and QAP, DHCD continued to be guided by PlanMaryland. PlanMaryland is a fundamental element of Maryland's Smart, Green & Growing Initiative, and is the state's strategic plan for long-term sustainability and a road map for smart growth and development during the coming years when Maryland's population is expected to increase and demographics are expected to change. The following statement from the Executive Order sets forth the purpose of PlanMaryland:

1. PlanMaryland shall be recognized as the State Development Plan for the State and shall serve as a guide to the economic and physical development of the State in order to:

a. Spur economic development, redevelopment, revitalization, and infill development;

b. Incentivize resources and agricultural based industries; and

c. Protect the rural, agricultural, natural, environmental, and cultural lands and resources.

2. PlanMaryland shall make State policies on development transparent, so local governments can most efficiently access State resources.

3. State agencies shall review and consider PlanMaryland when making decisions about actions that affect development in the State.

At all times during the review process, it has been DHCD's intent to ensure that Maryland's affordable housing development resources are fairly deployed in a manner that best serves Maryland residents, including families, seniors and persons with disabilities or special needs, and the continuing demand for quality, affordable rental housing across the State.

1 Introduction

DHCD administers a variety of State and federal programs that finance the development of affordable rental housing. These programs include, but are not limited to, the Low Income Housing Tax Credit Program (LIHTC), the Rental Housing Financing Programs (RHFP) which is a combination of the State-funded Rental Housing Program and the federally-funded HOME Investment Partnership Program, Rental Housing Works (RHW), and the Multifamily Bond Program (MBP). DHCD may, from time to time, establish new development financing programs to advance its mission.

While there are variations between these programs based on the underlying source of funds, State and federal requirements applicable to specific funding sources, and State policy goals, DHCD seeks to align many of the administrative processes that accompany these programs. This alignment makes these programs more user-friendly and contributes to operating efficiencies for DHCD and its partners, including owners, investors, and managers of properties financed by DHCD resources.

This Guide is an attachment to the Maryland Qualified Allocation Plan for the Allocation of Federal Low Income Housing Tax Credits (QAP) and, unless otherwise noted, the requirements herein apply to any transaction seeking allocations of LIHTC from DHCD, whether those come from the State's population-based credit ceiling or from the use of tax-exempt bonds. Additionally, unless otherwise noted, this Guide applies to MBP, RHW and RHFP (which includes the State funded Rental Housing Program and federal HOME funds as noted above). Unless otherwise noted, all references to timeframes in the QAP and Guide refer to calendar days.

2 Application Process

This section provides information on application and funding processes. For projects requesting MBP financing, RHW financing and non-competitive LIHTC only, some of the following steps may not apply, but more information for these programs may be found in the text boxes throughout this Guide.

Applications for competitive LIHTC and RHFP will be solicited by DHCD by public notice (the Public Notice) in one round per year. If needed, additional rounds of competition may be held until all available resources have been reserved.

Multifamily Bond Program and Rental Housing Works

Projects requesting MBP financing, with or without non-competitive LIHTC, may submit an application at any time. Processing is subject to certain fees that are subject to change. The current fees are described in Appendix D of this Guide. See Section 6.2 for additional information on MBP and RHW. Updates to fees are provided on DHCD's website at www.dhcd.maryland.gov.

2.1 Pre-Round Communication

2.1.1 Information Session

In advance of each competitive round, DHCD will hold a pre-round information session during which it will discuss resources available for the round, explain any changes to the QAP, Guide, or process, provide additional information about how State Bonus Points (described in Section 4.6) will be utilized in the round and provide an opportunity for questions and answers. The date, time, and location of the information session will be established in the Public Notice.

2.1.2 Optional Pre-Application Meetings

Applicants may request a pre-application meeting to receive preliminary feedback regarding project specifics as well as a meeting to discuss their proposed projects with DHCD staff.

2.1.3 Waiver Requests

Chapter 5 provides information on the submission of waiver requests, including appropriate justifications. Certain waivers must be submitted in advance of the application deadline.

2.2 - Local Governments- Notice and Opportunity to Comment

DHCD's process for notifying local governments and providing an opportunity to comment on applications for financing are as follows:

(1) Upon receipt of an Application Submission Package for LIHTC or for a loan under MBP, RHFP or RHW, DHCD shall provide written notice of the application and a reasonable opportunity to comment to the political subdivision in which the project is located. If the project is located in a municipal corporation, the notice shall be sent to the municipal corporation and not to the county. The written notice shall be sent to the political subdivision's highest elected public official and to the head or president of the political subdivision's legislative body. The written notice shall include the following information about the project:

(a) Date of application;

(b) Name and description of the project;

(c) Address of the project;

(d) Developer of the project and the Developer's contact information;

(e) Amount and type of funding and/or LIHTC requested;

(f) Amount, type, and provider of other sources of financing;

(g) Total number of units;

(h) Number of units reserved for families of limited income, including the income and rent limits; and

(i) Such other information as DHCD deems relevant.

(2) The political subdivision shall have forty-five (45) calendar days from the date the written notice is sent to review the project and DHCD's proposed financing for the project and provide comments, if any.

(3) If a political subdivision provides comments under paragraph (2) above, DHCD will consider the comments in its review of the application

2.3 Application Review Process

Projects seeking competitive financing will be considered only upon DHCD's receipt of a complete application by the application deadline. Applications will be evaluated first against the Threshold Criteria described in Chapter 3. Projects passing the threshold review will be evaluated against the Competitive Scoring Criteria described in Chapter 4.

These criteria are intended to select viable projects that meet DHCD's identified priorities as well as all federal and State requirements. Except for requirements of the programs' governing statutes, the Threshold Criteria may be waived by the Secretary for compelling reasons or in an emergency situation. See Chapter 5 for waiver provisions and requirements.

If an application is incomplete or does not meet the Threshold Criteria it will be rejected and the applicant will be notified in writing by DHCD. The rejection notice shall state the reason the application has been rejected. A sponsor may request reconsideration of a rejection within seven (7) calendar days of the date of the notice of rejection. The request for reconsideration shall be in writing and submitted to the Director of Multifamily Housing. The request may not include new or additional information and must establish that DHCD has made a mistake or error in its initial decision. DHCD will review the request and respond within seven (7) calendar days. If DHCD determines that its initial decision was incorrect, the project will be re-entered into processing. If DHCD upholds the initial decision, the applicant will be notified and the application will be withdrawn from processing. Rejected applications may be resubmitted in a subsequent round. An initial decision or reconsideration of a decision is not a contested case within the meaning of the Administrative Procedure Act or COMAR 05.01.01. DHCD reserves the right to redirect a project from the competition to the MBP if DHCD, in its sole discretion, determines that the project would be financially feasible using tax-exempt bond proceeds with or without other DHCD resources.

Multifamily Bond Program and Rental Housing Works Threshold Requirements

Projects requesting MBP and RHW financing, with or without non-competitive LIHTC, must also meet all of Threshold Criteria unless specified otherwise. Projects requesting MBP and RHW financing that do not meet all Threshold Criteria or have incomplete applications also will be withdrawn from processing. Requests for reconsideration may be filed in accordance with COMAR 05.05.02.08. See Section 6.2 for additional information on MBP. Additional RHW application requirements are outlined below and at the following website: http://dhcd.maryland.gov/HousingDevelopment/Documents/RHW_application.pdf

Generally, RHW funding is governed by the laws (statutes, regulations and the Guide) applicable to MBP with the following changes:

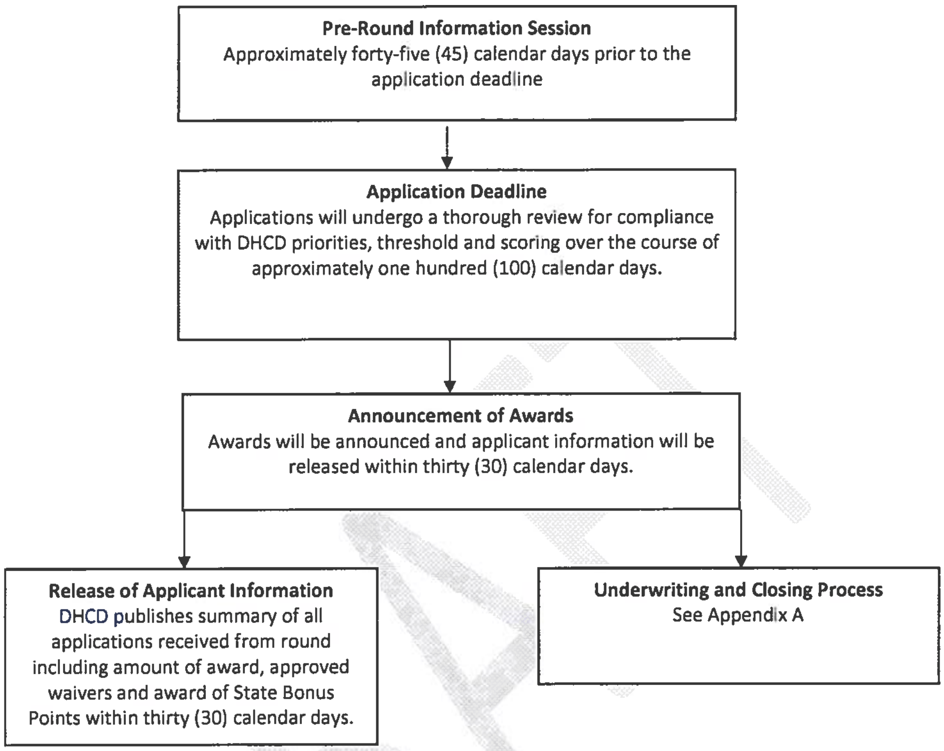
- RHW loans shall be subordinate loans with the terms and conditions described below
- RHW loans must be used in conjunction with MBP and 4% LIHTC. RHW applications should be submitted in conjunction with a MBP application.
- RHW loans may not be used as cash collateral for short-term bonds.
- RHW loans are not subject to the requirements of the MBP that are strictly applicable to the issuance of tax-exempt bonds.
- RHW applicants must satisfy the following additional threshold criteria:

- Required zoning for use and density of development must be in place at the time of application and properly documented. A letter from the local zoning office would be proper documentation. An approved Planned Unit Development resolution or a local jurisdiction's equivalent to a Planned Unit Development resolution also satisfies this requirement. Development or site plan approval is not required at application. Conditional use or special exception approval also is not required at application but must be obtained before closing.
- The award of any competitive public and private sources of funding necessary for the project's financial feasibility must have been made; and
- The project's projected Full Time Equivalent jobs must be documented using the FullTimeEquivalentJobCalculatorlocatedonDHCD'swebsite: http://dhcd.maryland.gov

- The Maryland Board of Public Works must approve all RHW funding awards if the source of the RHW funding is general obligation bonds.

A complete application evaluation consists of a review of the application and supporting documentation as well as a preliminary site visit. DHCD staff will present their evaluations to an internal DHCD committee for further review and evaluation. Recommendations for reservations of competitive RHFP and/or LIHTC will be made by the internal committee based on the evaluation of projects pursuant to the competitive scoring criteria, the award of State Bonus Points under Section 4.7, and the availability of resources. These recommendations will be made to DHCD's Housing Finance Review Committee (HFRC) for review. After evaluating the recommendations, HFRC will make final recommendations to the Secretary who will, in his or her discretion, approve projects for a reservation of RHFP or LIHTC and further processing. Under certain circumstances reservations may be contingent on the approval of Maryland's Board of Public Works (BPW). After a reservation has been issued, projects that do not continue to meet all Threshold Criteria outlined in this Guide will be withdrawn from processing.

The flowchart below provides an overview of the competitive application and award process:



2.4 Application Form and Fees

2.4.1 Application Form

Competitive applications must be submitted by the deadlines provided in the Public Notice using the Application Submission Package, which contains more detailed instructions regarding many of the requirements in this Guide. Information in the Application Submission Package supplements this Guide and should be reviewed carefully to ensure compliance with these requirements. The Submission Packages are available through DHCD's website at:

http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx

Applicants must submit two complete copies of the application form including all attachments and exhibits. Application forms shall not be re-typed, changed, or modified in any manner. DHCD reserves the right to require electronic submission of applications. All information on the application must be completed or marked as not applicable. All required exhibits must be included and all required documentation must meet the criteria specified in the Application Submission Package. Incomplete or late applications will not be considered.

For projects seeking competitive financing, applicants may not submit new application material concerning the project after the application deadline date unless DHCD, in its discretion, has requested applicants to submit clarifying information.

Generally, with the exception of market studies which must be less than six (6) months old, all documents submitted with applications, including environmental assessments must be less than twelve months old.

2.4.2 Fees

All sponsors must pay a nonrefundable fee of $2,500 for each application requesting RHFP, RHW, MBP, or LIHTC. Only one application fee is required for each project, regardless of the number of funding resources requested. The application fee must be paid simultaneously with or before submission of an application. Application fees must be sent under separate cover to the address below, with a copy of the check included with the application.

All application submissions, including repeat submissions, must include evidence that the application fee has been paid. Applications received without the required fee will not be evaluated. The application fee is retained by DHCD even if the application is unsuccessful. Projects failing to receive a reservation of competitive LIHTC or RHFP may reapply in another round, but a new application fee will be required. Appendices B and C summarize the fee requirements.

Unless advised otherwise by official DHCD notices, all fees must be made payable to the Community Development Administration or CDA and remitted directly to the attention of:

DHCD Central Cashier
Post Office Box 2521
Landover Hills, MD 20784

2.5 Release of Application Information

DHCD will release information on all applications seeking competitive LIHTC and/or RHFP within fourteen 14 calendar days of the competitive funding round deadline. The information will be published on DHCD's website and will include:

- Name of applicant;
- Project sponsor;
- Site location and address;
- Primary population served (family or elderly);

- Total number of units;
- Number of units reserved for persons with disabilities(PWD) or specials needs tenants;
- Amount and type (RHFP or LIHTC or both) of funds requested; and
- Total project cost.

In addition, DHCD will release a summary of competitive funding round award decisions within thirty (30) calendar days of announcing awards. This summary will be published on DHCD's website and will include the information listed above, as well as the distribution of LIHTC and RHFP to projects, disclosure of all waivers granted to applicants, and identification of projects which received State Bonus Points pursuant to Section 4.7 along with a rationale for why these points were awarded.

DHCD will periodically post information to its website regarding all applications for financing (both competitive and non-competitive), as well as information regarding the status of financing applications: http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx

2.6 Coordination with Other State Resources

DHCD will coordinate the allocation of LIHTC, RHFP, and RHW with the decision to allocate other State resources under the control of DHCD.

2.7 Loan Processing

If projects include RHFP or RHW loan financing, the processing requirements outlined in Section 6.1 apply.

3 Threshold Criteria

Projects must meet all of the following Threshold Criteria to ensure basic program guidelines are met and DHCD resources are reserved for projects that are viable and ready to proceed. Projects meeting all criteria listed in this section, or successfully obtaining waivers for such criteria, will be evaluated against the Competitive Scoring Criteria in Chapter 4.

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3.1 Development Team Requirements

As used within this Guide, the term Developer refers inclusively to the project sponsor, project owner, guarantor, and general partner/managing member with an ownership interest in the project's ownership entity whether such roles are held by individuals, corporate entities, partnerships or limited liability companies. The term Developer specifically excludes the investor/syndicator partner(s) or member(s) of the ownership entity.

The Development Team refers inclusively to the Developer and the team of professionals under contract to the Developer to assist with the overall development of a project. The Primary Development Team consists of the Developer and the project's general contractor, architect, and property manager. The Secondary Development Team includes the project's civil engineer, attorney, accountant, and/or other specialized professional service providers.

All corporations, limited liability companies or partnerships that make up the Developer or that will provide guarantees to the transaction must submit audited, reviewed or compiled financial statements, as well as interim statements acceptable to DHCD. If possible, financial statements should be prepared according to Generally Accepted Accounting Principles (GAAP). Any individuals providing guarantees or who will be a managing member or general partner in the Developer must submit personal financial statements, including certifications acceptable to DHCD. The required financial statements must include calculations of total assets, total liabilities, current assets, and current liabilities. Complete financial statement requirements may be found in the Application Submission Package.

If the financial statements, including associated management letters, raise concerns about material misstatements, lack of internal controls, or doubts about an entity's ability to remain a going concern, the application may, in the sole discretion of DHCD, be rejected on a threshold basis.

3.1.1 Previous Project Performance

Within five (5) years prior of the application date members of the Primary Development Team may not have received a reservation or commitment of funding from DHCD for a project that was not carried out for any of the following reasons:

- For LIHTC, entities that (1) received a reservation but were unable to place the project in service in the year of the reservation or unable to meet the requirements to receive a Carryover Allocation; (2) received a Carryover Allocation but could not meet the 10% expenditure test deadline necessary to keep a Carryover Allocation; (3) received a Carryover Allocation or other Allocation but could not place the project in service within the time required by the LIHTC Program; or (4) demonstrate a history or pattern of non-corrected serious health and safety issues as documented by IRS form(s) 8823.
- For RHFP, RHW and MBP, entities that received a reservation or commitment of loan funds but were unable to close the financing.

This criterion does not apply to the voluntary return of LIHTC, RHFP, RHW, or MBP reservation or commitment by a Developer based on a determination that the project as originally proposed is no longer feasible, provided that DHCD was willing to accept the return and there was no loss to DHCD of State resources. Additionally, DHCD will evaluate the role of Primary Development Team members relative to their role. For example, an architect would not be prevented from participating in a new transaction simply because they had been the architect on a project where the developer subsequently developed a pattern of noncompliance leading to issuance of IRS form 8823.

In addition, within the five years prior to the application date, Primary Development Team members may not have:

- Participated as an owner or manager in the development or operation of a project that has defaulted on a DHCD or other government or private sector loan;
- Consistently failed to provide documentation required by DHCD in connection with other loan applications or the management and operation of other existing projects;
- Been involuntarily removed as a general partner or managing member from any affordable housing project whether or not financed or subsidized by the programs of DHCD;
- Received a limited denial of participation from the U. S. Department of Housing and Urban Development (HUD);
- Been debarred, suspended, or voluntarily excluded from participation in any federal or state program;
- Been directly involved with any project placed on DHCD's defaulted loans watch list due to actions which, in the opinion of DHCD, are attributable to the sponsor or the Development Team member;
- Unpaid fees, loan arrearages, or other obligations due to DHCD on other projects; or
- Been found by any state or federal agency or court of competent jurisdiction to have acted in violation of the Fair Housing Act, the Civil Rights Act or any other state or federal law prohibiting discrimination, or failed to comply with the terms of any agreement or court order related to any settlement, conciliation or legal action related to such a violation.

This evaluation will be based on mandatory disclosures by Primary Development Team members, including submission of financial statements meeting the criteria specified in the Application Submission Package, as well as a review of DHCD records, personal credit histories, commercial credit reports, and other available information. Knowingly providing false information to DHCD on the application or otherwise may subject the applicant to penalties under Maryland law.

3.1.2 Credit History

Members of the Development Team acting in the role of Developer, general contractor, or property manager will not be considered for funding if they have unpaid state or federal income, payroll, or other taxes as of the application date or a record within the past five (5) years of any of the following that are unacceptable to DHCD:

- Chronic past due accounts;
- Substantial liens or judgments;
- Three or more instances of unpaid taxes (even if cured prior to the application date);
- Foreclosures or bankruptcies; or
- Deeds in lieu of foreclosure.

This evaluation will be based on mandatory disclosures by Development Team members, including submission of financial statements meeting the criteria specified in the Application Submission Package, as well as a review of DHCD records, personal credit histories, commercial credit reports, and other available information. Knowingly providing false information to DHCD on the application or otherwise may subject the applicant to penalties under Maryland law.

3.2 Occupancy Requirements

3.2.1 Minimum Income and Rent Restrictions

At a minimum, applicants must agree that low-income units in the project will be rented to households with incomes and at rents that do not exceed the levels required under the proposed funding source(s).

3.2.2 Definition of Elderly Housing

Any application for funding that reserves units for the elderly must meet DHCD's definition of elderly housing or must request a waiver.

DHCD defines Elderly Housing as any project that proposes to restrict occupancy to one or more of the units in the project based on age. DHCD defines an elderly household as one in which at least one household member is age sixty-two (62) or over. These definitions apply to all projects applying for LIHTC, RHFP, RHW or MBP financing as Elderly Housing.

FHA Insurance Threshold Requirement

For projects financed under FHA Insurance programs including FHA Risk Sharing, DHCD will follow the requirements of Chapter 3-2H of Handbook 4590.1 – Elderly Projects which defines Elderly Housing as: *"An elderly family means any household where the <u>head or spouse is 62 years of age or older, and also any single person who is 62 years of age or older.</u>"*

The Market Study provided in accordance with Section 3.12 must demonstrate demand for the project among the elderly population proposed. In all cases, Elderly Housing must comply with all applicable federal laws, including the Fair Housing Act.

3.2.3 Long Term Use Restrictions and Homeownership Opportunities

All projects requesting competitive LIHTC, RHFP, and/or RHW must agree to at least forty (40) years of low-income occupancy restrictions, unless a structured fifteen (15) year transition to homeownership is presented and accepted. All projects requesting non-competitive LIHTC and/or MBP loan funds must agree to at least thirty (30) years of low-income occupancy restrictions.

Properties intended for eventual homeownership must be physically designed to facilitate marketing for and conversion to homeownership. At application submission, projects must present a strategy that shows how funding will be made available from the project or other dedicated sources to prepare and assist residents for the transition of the project to homeownership at the close of the initial fifteen (15) year compliance period.

3.2.4 Relocation and Displacement

Generally, DHCD will not participate in a project if it results in the permanent displacement of more than 5% of elderly or disabled residents or 10% of family residents dwelling on the site of the proposed project. If the project will result in the relocation of any residential tenants, DHCD expects the applicant will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (42 U.S.C. 4601) (URA) and §104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. §5304(d)) regarding resident notice and compensation. These requirements apply to all funding requests regardless of the ultimate source of the funds.

All applicants should make themselves familiar with URA and §104(d) requirements, including required notices from both the purchaser and seller that may apply to the project. DHCD will consider waivers to its cap on permanent displacement only to the extent that the displacement complies with URA and leverages substantial federal investment. Information on federal relocation requirements and the rights of affected tenants may be found at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/relocation/notices

3.3 Marketing Requirements

3.3.1 Public and Assisted Housing Waiting List

All projects must establish a priority for households on waiting lists for public housing or other federal or State assisted low-income housing. The applicant also must demonstrate that the entity maintaining the waiting list is willing to refer tenants to the project.

3.3.2 Affirmative Fair Housing Marketing

The State of Maryland has a compelling interest in creating fair and open access to affordable housing and promoting compliance with state and federal civil rights obligations. Fair Housing requirements apply to the full spectrum of housing activities including but not limited to outreach and marketing, the qualification and selection of residents, and occupancy. This Guide and the QAP continue DHCD's long-standing commitment to affirmatively furthering fair housing.

All applications must include a certification that the project will develop and implement an Affirmative Fair Housing Marketing Plan (AFHMP) using form HUD-935.2A available online at:

http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.pdf

To provide the greatest access to housing opportunities by Maryland's residents, all AFHMPs also must include, at a minimum, the following provisions:

- prohibit income requirements for prospective tenants with Housing Choice Vouchers or similar vouchers, including, but not limited to, VASH, Shelter Plus Care, Bridge Subsidy and Continuum of Care;
- eliminate local residency preferences;
- ensure access to leasing offices for persons with disabilities;
- provide flexible application and office hours to permit working families and individuals to apply; and
- encourage credit references and testing that take into account the needs of persons with disabilities or special needs.

In the event HUD updates form HUD-935.2A or DHCD later publishes additional AFHMP requirements, applicants will be required to use the newest versions of such forms and/or criteria available.

Prior to closing DHCD will review the AFHMP to ensure the AFHMP is in conformance with all HUD and DHCD requirements, and will reject any AFHMP not in conformance. Additionally, projects must review and update their AFHMP at least every 5 years or when required by

DHCD. Failure to comply with an approved AFHMP will result in negative points in future applications as described in Section 4.1.2.

3.4 Tenant Services

All projects must provide services appropriate to the population served by the project. To be considered for financing, an application must include a certification by the applicant that it will provide appropriate services throughout the compliance period or loan term, as applicable, that address the following:

- Family projects must deliver or coordinate services that improve building and unit maintenance, stabilize occupancy by improving residents' abilities to uphold their lease obligations, and enhance quality of life and self-sufficiency for residents, including children;
- Elderly occupancy projects must deliver or coordinate services that stabilize occupancy by improving residents' abilities to uphold their lease obligations throughout the aging process and enhance quality of life through improved access to or information concerning services and benefits, health promotion, community building, and socialization;
- Projects that include populations with disabilities or special needs must ensure that the targeted population served is able to benefit and access the services provided to the general population at the property;
- All projects must, at a minimum, provide passive links to appropriate community services for tenants.

3.5 Persons with Disabilities (PWD)

3.5.1 Uniform Federal Accessibility Standards Requirements

All projects must ensure that persons with physical disabilities have priority for occupancy of any units qualified under the Uniform Federal Accessibility Standards (UFAS). To ensure that persons with disabilities who require the features of a UFAS unit receive priority for UFAS qualified housing, when a UFAS unit becomes available, it must be offered first to a prospective tenant whose disabilities require such a unit even if other applicants who do not require accessible units have higher placement on the general waiting list. However, owners are not required to disregard occupancy restrictions imposed by any applicable financing program, State or federal law, or lease. Additionally, when renting UFAS units to households that do not require an accessible unit, owners are required to include provisions in the lease that require the household to move to another comparable unit (should there be a comparable unit available) within the project in order to make the UFAS unit available for a household that requires such a unit.

All projects must comply with UFAS and any other applicable laws or requirements, including without limitation Section 504 of the Rehabilitation Act of 1973 (Section 504), the regulations implementing Section 504 at 24 CFR Part 8, the Americans with Disabilities Act (ADA), and the 2010 ADA Standards (as modified by HUD).

3.5.2 Family Housing Developments – Units Reserved for Persons with Disabilities

All family projects must reserve at least five percent (5%) of all units for households at or below 60% AMI and headed by a non-elderly PWD. Non-elderly disabled units provided under the Bailey Consent decree in Baltimore City will satisfy this requirement. However, this requirement is also satisfied by serving non-elderly PWD who do not meet the City's non-elderly disabled definition. Projects that exceed the requirements of this section may qualify to receive points under the Competitive Scoring Criteria detailed in Section 4.4.2.

Units reserved under this threshold requirement must be reserved exclusively for targeted populations for a period of not less than sixty (60) calendar days both at initial lease-up and upon turnover. The sixty (60) calendar day time period at lease-up will be measured from the date upon which the project achieves 80% occupancy and at turnover will be measured from the date upon which the unit is determined ready for occupancy following move-out by the prior tenants and completion of any cleaning, repairs, or maintenance. In addition to other marketing or referrals for the units, projects with non-elderly PWD units must agree to provide notice of unit availability to and accept referrals from the Maryland Department of Disabilities (MDOD) and/or the Maryland Department of Health and Mental Hygiene (DHMH).

3.6 Other Financing Commitments

Letters of intent to provide financing must be furnished for all funding sources identified in the application. At a minimum, letters of intent must state that the project appears feasible and must show the amount of anticipated funding, general repayment terms, and any financial conditions. Letters of intent from the intended first mortgagee also must include the lender's acknowledgement of DHCD's financing regulations and policies and the lender's agreement to cooperate with the applicable RHFP, RHW, LIHTC, and MBP processes, as appropriate.

In addition, if financing will be subsidized or insured, evidence must be provided that the appropriate applications have been prepared and have been or are ready to be filed. For projects proposing financing with an FHA-insured first mortgage and an RHFP or RHW loan, the lender must acknowledge in its letter of intent that it will accept the use of the FHA/DHCD Intercreditor Agreement without modification. Lenders for FHA-insured first mortgages must also detail the proposed schedule for Multifamily Accelerated Processing (MAP). This schedule must correspond with the Developer's schedule as set forth in the application.

For projects applying for LIHTC, applicants must provide a proposal from at least one syndication firm showing the amount of expected LIHTC, the investor type, expected net proceeds, syndication costs, pay-in schedule, and willingness to comply with DHCD's regulations. The syndicator's letter must provide a proposed schedule for completing its due diligence and indicate the current status of its review of the application and project, including whether a site visit has been completed.

Letters that fail to explicitly include the acknowledgements and information listed above will be rejected as incomplete and will result in the application failing threshold review and being removed from processing.

3.7 Rental Housing Financing Programs & Rental Housing Work Loan Requirements

This section sets forth the terms applicable to RHFP and RHW loans. A sponsor of a project that has been awarded RHFP funds may generally choose the repayment option set forth in either Section 3.7.2 or 3.7.3, unless the underwriting for the project indicates that the project can bear a must-pay loan as described in Section 3.7.4. Sponsors must select a repayment option prior to execution of a loan commitment with DHCD. In all cases, DHCD reserves the right to adjust loan terms for a particular project based on its underwriting and subsidy layering reviews.

3.7.1 General Terms

The following terms are generally applicable to all loans:

- Maximum awards: Generally the maximum RHFP loan per project may not exceed $2 million except as permitted in COMAR. RHW loans may not exceed $2.5 million.
- Prepayment restrictions: RHFP and RHW loans are, by regulation, subject to certain restrictions upon prepayment including, but not limited to, continuing occupancy restrictions, tenant notices and relocation requirements.
- Loan Term: The RHFP and RHW construction loan period (generally the construction contract term plus three months for cost certification) plus 40 year permanent loan period. Maturity will be accelerated due to sale, refinancing or other transfer of the project, or occurrence of an event of default.

Standard Surplus Cash Repayment Terms. The terms set forth below reflect DHCD's traditional surplus cash repayment terms. This option is most commonly used for RHFP and RHW loans in conjunction with LIHTC. A form of the note used in connection with this form of loan is available on the DHCD website: http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx

- Interest: 0% interest during the construction loan period; 2% simple interest during the permanent loan period.

- Construction Loan Period: No payments during construction loan period.
- Payment Dates: Annual payments are due three months after the end of the borrower's fiscal year.
- First Payment: First payment is interest only based on the lesser of (i) 75% of surplus cash; or (ii) the amount of interest accrued from the end of the construction loan period to the end of the borrower's fiscal year.
- Regular Payments: Thereafter, payments of principal and interest are based on the lesser of (i) 75% of surplus cash or (ii) an amortized amount of principal and interest that would pay off the loan in 40 years.
- Surplus Cash Definition: The definition of surplus cash for purposes of repayment of a RHFP Loan is set forth in the note and generally does not permit payments to partners or members to be paid ahead of loan payments to DHCD (except for a $3,000 annual investor services fee).

3.7.2 Contingent Interest Surplus Cash Repayment Terms RHFP and RHW Loans

Below are alternative repayment terms that DHCD has approved where DHCD agrees to limit the amount of interest that would otherwise accrue on a traditional surplus cash loan. A form of the note used in connection with this form of loan is available on the DHCD website: http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx

- Interest: 0% stated interest for both construction loan period and permanent loan period.
- Construction Loan Period: No payments during construction loan period.
- Regular Payments: Annual payments are due three months after the end of the borrower's fiscal year commencing three months after the end of the year in which the construction loan period ends.
- Regular Principal Payments: Principal payments shall be paid based on a percentage of surplus cash (see below regarding calculation of this percentage) determined as of the end of borrower's fiscal year.
    - Note: The amount paid is not limited by an amortizing amount as in the standard terms under Section 3.7.2.
    - The definition of surplus cash for principal payments is the same as that used for the standard surplus cash repayment terms under Section 3.7.2.
- Regular Contingent Interest Payments: Once principal is repaid, "contingent interest" payments shall be made from a percentage of "contingent interest surplus cash". The definition of "contingent interest surplus cash" allows this payment to be made later in the project's cash flow "waterfall" behind the payment of deferred developer fees, partner loans, deferred investor services fees, and tax credit adjustment payments.

- Maximum Contingent Interest Amount: The Maximum amount of contingent interest to be paid will be capped to an amount equal to the amount of interest that would have accrued at the rate of 4% on the outstanding principal balance of the loan.
- Surplus Cash Percentage: The following principles apply with respect to the DHCD surplus cash percentage used for principal payments:
    - Until deferred developer fees are paid, DHCD's percentage will not exceed 50%.
    - If a local government is also making a loan to the project greater than $250,000, so long as the local government agrees to the same terms and conditions as apply to DHCD's contingent interest surplus cash loan, DHCD may allow a local government to share a percentage of the surplus cash, proportionately, up to 25%.
    - If the local government's capital contribution is greater than 60% of the project's total public subordinate debt, DHCD will share the available surplus cash evenly with the local government.

    Appendix E sets forth examples of surplus cash splits in a variety of scenarios. In addition, the DHCD website includes a calculator that may be used to determine the relative surplus cash percentages of the parties for a particular project: http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx

- Contingent Interest Percentage (used for contingent interest payments): DHCD's contingent interest percentage (used for contingent interest payments) will be the greater of (i) the percentage that the Loan comprises of the total costs of the project; or (ii) 20%. The calculator on the DHCD website may also be used to determine the contingent interest percentages applicable to the parties involved in financing a project.
- Capital Event Contingent Interest Payment: In the event of a capital event, such as a sale or transfer of the project, refinancing of the loan, or the maturity of the loan, a payment shall be due to DHCD from the net proceeds of the capital event. The amount due shall be determined based on DHCD's contingent interest percentage of the net proceeds provided that the aggregate amount of contingent interest payments does not exceed the maximum contingent interest amount described above.

3.7.3 Amortizing Loans

In some cases, a Project's anticipated cash flow and debt service are such that it is reasonable to expect the borrower to make regular monthly payments of principal and interest. The general requirements set forth in Section 3.7.1 would also be applicable to such loans.

Multifamily Bond Program Terms and Conditions

Loans provided under the MBP must be amortized at an interest rate set by DHCD. The term of the loan may be up to forty (40) years for either taxable or tax-exempt bond funded loans. All projects must be credit-enhanced so that the bonds sold to fund the loans can receive a rating of "AA" or better from DHCD's rating services, unless an alternative structure is approved by DHCD. See Section 6.2 for additional information on MBP.

3.8 LIHTC Award Limits

The maximum amount of competitive LIHTC reservation or allocation will be limited to not more than $1.5 million to any single project. Reservation and/or allocations may be split over two (2) or more calendar years.

Allocations of non-competitive LIHTC pursuant to §42(h)(4)(B) of the code (federally subsidized tax-exempt bond transactions) are not subject to the $1.5 million cap noted above and limited only by the amount required, at the sole determination of DHCD, for the long term feasibility of the project.

3.9 Underwriting Standards

To pass threshold, all applications must be submitted meeting the underwriting standards listed in Sections 3.9.1 through 3.9.8.

Consistent with its obligations under §42(m)(2) of the Code, which requires that LIHTC allocations not exceed what is necessary for financial feasibility, and in consideration of best practices promoted by the National Council of State Housing Agencies, DHCD will underwrite all applications for LIHTC, RHFP, MBP, and RHW. In so doing, DHCD must balance the efficient use of resources with the need to develop housing that is viable and sustainable for the entire compliance and extended period.

Projects without project-based Section 8 assistance that are subject to federal subsidy layering requirements under §911 of the Housing and Community Development Act of 1992 are subject to the Memorandum of Understanding between DHCD and HUD. Additionally, projects with project-based housing choice vouchers must comply with the standards in the HUD Administrative Guidelines: Subsidy Layering Review for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts, as published in the Federal Register, July 9, 2010.

3.9.1 Maximum Rents

Low-income units in a project must be rent restricted as required by the most restrictive funding source. Applications that anticipate the use of project-based rental assistance must show a breakdown of the actual rent to be paid by tenants and the estimated rental subsidy that will be received by the project owner.

In all cases, the Market Study and appraisal must demonstrate the proposed rents are achievable. Rents must allow for a reasonable affordability window so that tenants below the maximum income for targeted units are not paying a disproportionate percentage of their income for rent (i.e. in excess of 30% for family projects or 35% for elderly projects).

Maximum unit rents (inclusive of tenant paid utilities) may not exceed 30% of the imputed gross income limit applicable to each unit based on an assumption of 1.5 persons per bedroom for units with one or more bedrooms and 1.0 persons per bedroom for efficiency or Single Room Occupancy (SRO) units. For example, the maximum rent calculation for a two-bedroom unit targeted to households at 40% of the area median income would be calculated by dividing 40% of the area median income for a three (3) person household by twelve (12) and multiplying by 30%.

For units restricted to Elderly Households, the imputed household size may not exceed three persons regardless of the number of bedrooms. For example, in a family project, the rent for a three-bedroom unit would be based on a 4.5 person household, but if designated as an elderly unit the maximum rent must be calculated based on a three (3) person household.

Area Median Income charts, including adjustments for household size, are published annually by HUD and posted on DHCD's website at: http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx

3.9.2 Vacancy

All projects will be underwritten with a minimum vacancy rate of 5%. Additionally, the Market Study must fully support the proposed vacancy level. DHCD reserves the right to reject as infeasible any project that requires a vacancy rate of 10% or more.

Multifamily Bond Program Terms and Conditions
Loans financed using the FHA Risk Sharing Program generally will be underwritten using a 7% vacancy rate. See Section 6.2 for additional information on MBP.

3.9.3 Operating Expenses

Annual operating expenses, including all real estate taxes but excluding replacement reserve deposits, should be no less than $4,000 per unit per year and no more than $7,000 per unit per year. Waivers may be requested for small projects of up to forty (40) units, and for projects with master-metered (i.e. project paid) utilities, or for other unusual circumstances.

3.9.4 Reserves for Replacement

All projects must budget at least $300 per unit per year in reserves for replacement (RFR) deposits. Additionally, RFR deposits must be adequate to support the project as determined by a capital needs assessment (CNA) prepared by a qualified third party. DHCD reserves the right, in its sole discretion, to require a new CNA every five to ten years and adjust RFR deposits based upon such new CNA.

3.9.5 Operating Reserves

Each project must establish an operating reserve equal to between three and six months of underwritten operating expenses, debt service payments, and required deposits to other reserves. At a minimum, capitalized operating reserves must remain in place until the project has achieved a minimum 1.15 debt service coverage ratio, economic break-even operations for one complete fiscal year as confirmed by the project's annual audit, and reached and sustained 90% occupancy for twelve (12) consecutive months. In the discretion of DHCD, the operating reserve may be released over the next three (3) years provided the project continues to achieve economic break-even operations and sustains 90% occupancy.

Upon release, operating reserves generally may be used to pay any outstanding deferred developer's fee, reduce any State loan, fund other reserves, fund project betterments, or otherwise be applied as approved by DHCD.

3.9.6 Trending

In evaluating the long term viability of the project, DHCD requires that rents and other revenue from the project be projected to increase by no more than 2% annually. Operating expenses (including property taxes) must be projected to increase by not less than 3% annually.

3.9.7 Debt Service Coverage Ratio

All projects must be underwritten to a minimum debt service coverage ratio (DSCR) of 1.15 in the first year of stabilized operations. The DSCR will be calculated including all must-pay debt service payments. For projects with amortizing debt service on a RHFP or RHW loan, the minimum DSCR is 1.1.

3.9.8 Development Costs and Fees

Consistent with §42(m)(2) of the Internal Revenue Code and industry best practices, DHCD limits funding awards to the amount necessary to make a transaction viable. Even if a specific line item is not being paid with LIHTC equity or DHCD funds, any excessive cost, regardless of the source of financing, increases the gap and affects the public subsidy needed by a transaction. As a result, DHCD reserves the right to require any applicant to provide a justification of any development cost line item regardless of the source of funding. The following standards will be applied to specific cost items.

3.9.8.1 Acquisition

In all cases and regardless of which proposed funding source will pay for the acquisition price, an appraisal will be used to assess the reasonableness of the acquisition price in the project budget. In most cases, independent professional appraisers under contract with DHCD will perform the appraisal and the applicant will pay the costs of any required appraisals; provided, however, DHCD, in its sole discretion, may accept an appraisal that is required by another lender and prepared by an independent professional appraiser for that lender. For LIHTC transactions involving acquisition credits, DHCD may, as a condition of a reservation and at its discretion, request an opinion from an independent CPA or tax attorney confirming that the planned acquisition conforms with §42(d)(2)(B) of the Code (i.e. the Ten-Year Rule).

The acquisition price is defined as the consideration offered for the transfer of title and legal ownership. The acquisition price does not include:

- Reasonable and necessary soft costs related to the acquisition, such as legal expenses associated with zoning, title expenses, relocation costs, and engineering fees; or
- Off-site improvements, such as extensions of infrastructure necessary to prepare the site for its intended use, provided that the absence of such improvements is clearly noted and accounted for within the appraisal's estimate of "as is" value.

The acquisition price must meet the following requirements:

- In the case of an Arms-Length Transaction (as defined below), the acquisition price must be less than or equal to the "as is" appraised value of the property.
- In the case of a transaction involving a change of use, the acquisition price must not exceed the lesser of the "as is" appraised value or the "as completed" appraised value based on the project's projected end use. In the case of a Related Party Transaction where the property was acquired less than two years before the application date, the acquisition price must not exceed the lesser of the "as is" appraised value or the applicant's original acquisition price plus carrying costs acceptable to DHCD.
- In the case of a Related Party Transaction (as defined below) where the property was acquired two or more years before the application date, the acquisition price does not exceed the "as is" appraised value of the property.

For purposes of this section, an Arms-Length Transaction is one between parties made freely and independently of each other, and without a special relationship such as family relationship, other business relationship, or the existence of a controlling interest between the parties. In contrast, a Related Party Transaction includes one between parties where familial, business, controlling interests, or other close ties exist prior to the transaction.

Except for family housing projects located in a Community of Opportunity, any portion of the acquisition price in excess of the "as is" value may not be financed or reimbursed by RHFP or other project sources, may not be used in calculating the developer fee, and may not be reimbursed from cost savings at final closing. The excess must be paid with non-project sources such as proceeds of the developer fee. For a family housing project located in a Community of Opportunity, the acquisition price may be up to 120% of the "as is" value before being subject to the limitations outlined in this paragraph.

Exceptions to the acquisition price standards may be submitted to DHCD on a case by case basis under the waiver process described in Section 5.2.10. Waivers to the acquisition price limitations will be in DHCD's sole discretion, and DHCD expects the approval of such excess acquisition prices to be extremely limited.

Additionally, DHCD loan funds may not be used directly to purchase schools or school sites owned by local governments or religious institutions for conversion to housing, except as permitted by waiver as provided in Section 5.2.4.

DHCD will allow real estate taxes and other carrying costs associated with owning the site for up to twelve (12) months prior to application and during the period after acquisition and application to be counted towards the allowed acquisition price of the property for the purpose of meeting the 10% expenditure tests associated with awards of LIHTC.

3.9.8.2 Syndication Costs

For projects seeking LIHTC awards, the projected net equity from syndication should be based on current market conditions. Net equity will take into account syndication and partnership fees included in the project budget. When analyzing the LIHTC market, DHCD may adjust the equity rate for purposes of determining the appropriate award of credits.

Because the market for LIHTC equity is variable, DHCD intends to provide notice ahead of each funding round about its current assumptions for equity pricing and reserves the right to establish both minimum and maximum pricing. Further, DHCD reserves the right to require an applicant to submit documentation from equity providers justifying the reasonableness of the applicant's equity pricing assumptions.

Payment of an investor service's fee will be restricted to $3,000 annually prior to payment of DHCD loan payment.

3.9.8.3 Professional Fees

Subject to the further definitions and restrictions below, the following limits on professional fees will apply to all projects:

Summary of Professional Fee Limitations		
	Large Projects	***Small Projects (up to 40 units)***
Builder's Fees—Aggregate limit % of net construction costs	New construction: 15% Rehabilitation: 17%	New construction & Rehab:20%
Builder's Profit	10%	
Builder's Overheard	3%	
General Requirements	10%	
Civil Engineering % of net construction costs	5%	7%
Architect—Design % of construction contract	5%	7%
Architect—Administration % of construction contract	3%	4%
Developer Fee % of aggregate basis	10-15% as further defined below	

- Applicants may request waivers to the professional fee limitations described above for small projects (those with up to forty (40) units) and/or projects that require specialized consultants or services. Waivers must be requested in accordance with Chapter 5 and will be granted at the sole discretion of DHCD and upon a determination that the increased costs are necessary and reasonable given unique features of the proposed project.

- **Developer's Fee** – The Developer's Fee is inclusive of all fees paid to the Developer, processing agents, and development consultants, and includes deferred fee. The range of allowable developer's fees is from 10% to 15% of total development costs as approved by DHCD based on the table below. For purposes of this calculation, total development costs include the following: expenses related to the construction or rehabilitation of the project; fees related to construction or rehabilitation such as architecture, engineering and legal expenses; financing fees and charges such as construction interest, taxes, insurance and lender fees; and acquisition related costs which may include master planning costs. Total development costs do not include the following: hard or soft cost contingencies; syndication related costs; funded guarantee and reserve accounts that are required by lenders or investors; and the Developer's Fee.

For projects with competitive RHFP and LIHTC the Developer's Fee may not exceed $2.5 million.

Developer's Fee Limits		
	Fee on Development Costs	***Fee on Acquisition Costs***
First $10 million	15%	10%
Amount in excess of $10 million	10%	5%

Sponsors may request up to an additional five (5) percent above the calculated developer fee if 80% of the entire additional fee is escrowed with DHCD or another lender to fund a rent subsidy for Targeted Population (See Section 4.4.2) units set aside for persons at or below 20% of area median income for the initial 15 year LIHTC compliance period. The remaining 20% will be made available to the project sponsor as an incentive for providing units to target populations. Funds deposited in the rent subsidy will be used to fund the difference between the 20% AMI rent and 60% AMI rent. DHCD will work with sponsors to determine the exact mechanism necessary and appropriate to ensure funding on the subsidy. Additionally, during the initial 15 year compliance period, DHCD will review, approve and monitor use of the rental subsidy. Provisions for the rent subsidy will be incorporated into DHCD's loan documents, as appropriate. The additional five (5) percent above the calculated developer fee will not be subject to the $2.5 million limit stated above. See Chapter 5 of this Guide for more information.

Note that while this section describes the limits on the allowable Developer's Fee, Section 5.2.8 addresses expectations on the disbursement of the Developer's Fee.

3.9.9 Phased Projects

Applications for subsequent phases of projects already in receipt of a reservation of RHFP or LIHTC allocations must show evidence that the original phase(s) of the project has achieved Sustaining Occupancy. For this purpose, Sustaining Occupancy means a minimum of three (3) months of break-even operations and occupancy at 90% or greater.

3.10 Readiness to Proceed and Financial Feasibility

As part of the Application Submission Package, sponsors must complete the Anticipated Development Schedule in CDA Form 202. This schedule should be consistent with DHCD's underwriting and construction review process as outlined in Appendix A of this Guide as well as LIHTC requirements. If a project is approved for a LIHTC and/or RHFP reservation, it is expected to meet the development schedule as proposed. In cases where a zoning change, variance, or exception is necessary, schedules must be consistent with the analysis provided by the Development Team's zoning attorney or engineer. In all cases, the Anticipated Development Schedule should reflect the project's readiness to use current calendar year LIHTC and current fiscal year RHFP funds. If a project envisions utilizing other than current calendar year LIHTC and/or current fiscal year RHFP loan funds, the application must provide sufficient explanation and supporting information for the alternate development schedule.

Additionally, all projects must be financially feasible in accordance with DHCD underwriting standards and generally accepted industry practices.

3.11 Site Requirements

3.11.1 Site Control

Sponsors must have sufficient site control to allow projects to move forward if they receive a reservation of funds. At the time of application, site control should extend for at least one-hundred and eighty (180) calendar days after the application deadline date (including extension options). Acceptable evidence of site control includes deeds, contracts of sale, leases, purchase options, Land Disposition Agreement and other similar agreements from a local government (without regard to the status of the underlying condemnation/acquisition process) or other evidence at DHCD's discretion.

3.11.2 Utility Availability

Evidence that public water, sewer, electric, gas, telephone, internet and cable services are at project sites or will be available during the construction or rehabilitation period must be provided. Acceptable evidence of utility availability may include a letter from the Development Team's civil engineer, the utility company providing the service, a responsible local official or, for existing buildings, copies of recent utility bills. Alternately, the applicant may provide a certification in the form provided in the Application Submission Package.

3.11.3 Zoning

Sites must be properly zoned for their intended use. If a zoning change, variance, or exception is required, sponsors must provide the following information in the application:

- Documentation illustrating the present status of the proposed zoning change, the local planning and zoning process;
- Contact information for a local official familiar with the project and responsible for the approval process; and
- A detailed schedule with projected dates for obtaining the required approvals corresponding to the project schedule in the Application Submission Package.

3.11.4 Environmental Assessments

Each project must comply with applicable requirements of local, state and federal environmental laws and regulations. As part of the Application Submission Package, an environmental assessment checklist or environmental report, if available, must be included. Environmental assessments must not be more than one year old as dated from application submission.

3.11.5 Scattered Sites

Except for family housing located in a Community of Opportunity, projects which involve either the rehabilitation of existing scattered site homes or new construction on non-contiguous vacant infill lots, whether as a stand-alone project or as part of a larger scattered site redevelopment project, must include in the application a current community revitalization plan. The community revitalization plan must be prepared in accord with the requirements of Section 4.2.1 of this Guide.

Except for family housing located in a Community of Opportunity, no targeted unit in any scattered site project may be adjacent to a vacant unit that is not part of the project or is not otherwise specifically targeted for redevelopment in a community revitalization plan.

3.11.6 Exceptions

The requirements for site control, availability of utilities, environmental, and zoning compliance, and scattered sites are not applicable to projects that involve the purchase of completed residential units constructed under a density bonus, affordable zone, or other comparable program. Additionally, site control requirements are not applicable for a sponsor of a scattered site family project in a Community of Opportunity. Sponsors of both of these types of projects must provide a detailed proposal for identifying specific sites and indicating how and when they will obtain site control.

3.11.7 New Construction - Priority Funding Areas (Smart Growth)

All projects involving any new construction must be located in a Priority Funding Area (PFA) under Maryland's Smart Green and Growing Initiative. PFAs include:

- All incorporated municipalities including Baltimore City, with some exceptions related to water, sewer and density for areas annexed after January 1, 1997;
- All areas between the Baltimore beltway and the Baltimore City limits and the Washington, DC beltway and the Washington, DC boundary;
- All areas designated as Sustainable Communities, as defined by the Maryland Annotated Code, Housing and Community Development Article, Section 6-201(l) (see Section 4.2.3);
- Federal and State enterprise zones;
- All areas designated by county governments as PFAs, including rural villages designated in county comprehensive plans as of July 1, 1998; and
- Certified heritage areas within locally designated growth areas.

All applications for projects involving any new construction must include a letter from the local government that certifies the project is located in a PFA. Information regarding PFAs may also be found at the link below:

http://www.mdp.state.md.us/OurWork/SmartGrowthTrendsAndAnalysis.shtml

3.12 Market Study

Applications must provide a Market Study commissioned by the applicant that must demonstrate the need for affordable rental housing in the local market and must meet the following criteria:

1. The Market Study must be prepared by an independent professional who has experience with affordable multifamily rental housing in Maryland and whose firm appears either on the list of acceptable market analysts maintained by DHCD or on the list of firms who have undergone peer review by the National Council of Housing Market Analysts (NCHMA).. Additional information on recommended practices for market studies and standard terminology as well as the NCHMA-approved list of analysts is available through the NCHMA website. DHCD's list of acceptable market analysts is posted on the DHCD website at:
2. http://dhcd.maryland.gov/HousingDevelopment/Documents/rhf/AppraiserList.pdf The Market Study shall be no more than six months old as dated from application submission;

3. The Market Study must provide a concise executive summary of the data, analysis, and conclusions of the report covering the items listed below, with easy references to find the detailed information provided in the summary; and

4. The Market Study must address and satisfy the standards described in this Section 3.12.1. The Market Study must be consistent with the most recent version of the NCHMA Model Content Standards for Rental Housing Market Studies, which is available on the NCHMA

website at: https://www.housingonline.com/councils/national-council-housing-market analysts/model-content-standards/

5. The Market Study must provide:

- A detailed project description including the proposed number of units by number of bedrooms, unit size in square feet, utility allowances for tenant-paid utilities, and rents. This project description must match the information provided on the CDA Form 202 submitted with the Application;
- A geographic definition (other than a simple radius) of the primary market area (PMA) and secondary market area (SMA) including maps of the PMA and SMA; and
- A complete and accurate description of the site and the immediate surrounding area, including:
    - Information and statistics pertaining to school performance including Maryland School Assessment (MSA) test results compared to the State's average; graduation rates compared to the State's average; and an analysis of how this information might affect the market performance of the project.
    - Information about opportunities for recreation, education, convenient access to mass transit or rail systems and community activities for the building, project site, and nearby surroundings. A chart and map that shows proximity to public services, grocery, medical facilities, and public transportation must be included.
    - Information and/or statistics on crime in the PMA relative to data for the overall area. Where the data on crime is limited, information for the broader jurisdiction may be provided.

3.12.1 Market Analysis

The Market Study must:

- Provide a summary of market-related strengths and/or weaknesses that may influence the project's marketability, including:
    - Quantifying and discussing market advantage of the subject property and impact on marketability;
    - Projecting and explaining any future changes in the housing stock within the PMA; and
    - Identifying risks (i.e. competitive properties which may come on line at the same time as the subject property, declining population in the PMA), unusual conditions, and mitigating circumstances.

- Provide an opinion of the market analyst of market feasibility including the prospect for long-term performance of the property given housing and demographic trends and economic factors;
- For properties with project-based Section 8 or USDA Rural Housing assistance, provide a marketability opinion in the event the Section 8 Housing Assistance Payments (HAP) or USDA Rural Housing rental assistance agreement is not renewed or expires;
- Derive a market rent and an achievable rent and then compare them to the proposed rent;
- Evaluate the need for voucher support or HUD contracts;
- Provide an estimate of the number of renter households qualified by income and, if appropriate, age for the targeted program(s) (using the definition of Elderly Household in Section 3.2.2) and persons with disabilities or special needs set-asides, if any, in the PMA;
- Provide rent levels, operating expenses, comparative amenity study, turnover rates, waiting lists, and vacancy rates of comparable projects in the market area with an analysis of the competitive advantages offered by the applicant's proposed project;
- Support the applicant's proposed vacancy rate and the income targeting of the project; and
- Provide a summary of the project's positive and negative attributes and impact on existing projects already in DHCD's portfolio and projects in DHCD's current processing pipeline. To ensure that the Market Study addresses all the relevant properties, the market analyst must use the DHCD website to generate a proximity report identifying properties within up to 5 miles of the project site. http://www.dhcd.state.md.us/GIS/multifamily/index.html

3.12.2 Capture Rate

- The Market Study must provide a capture rate for the proposed project overall, as well as capture rates for each targeted income band and bedroom count;
- Rent burdens (rent plus utility allowance, if any) may not exceed 30% of gross income except in elderly projects where rent burdens may not exceed 35% of gross income; and
- The overall capture rate for a project must not exceed 10%, and the maximum capture rate for individual income bands and bedroom counts must not exceed 20%.

3.12.3 Penetration Rate—New Construction Projects only

- The Market Study must provide the penetration rate for the proposed project overall, as well as for each targeted income band in accordance with NCHMA guidelines;

- The penetration rate for a project must not exceed 100% for the overall project and for each individual income band.

3.12.4 Vacancy Rates

- The Market Study must demonstrate that the overall vacancy rate in the PMA for the type of project proposed (i.e. family/elderly) does not exceed 15% and the vacancy rate among affordable rental properties of the same type in the PMA does not exceed 10%.

3.12.5 Income Levels

- The Market Study must provide a detailed analysis of the income levels of the potential tenants for the proposed units; and
- The Market Study must state and support the minimum household income used for total housing expenses to set the lower limit of the targeted household income range.

3.12.6 Absorption Rate

- The Market Study must provide an absorption rate for the proposed project; and
- The Market Study must define and justify the absorption period and absorption rate for the subject property, which includes documentation and descriptions that show the methodology for calculations in the analysis section and relate the conclusions to the data.

3.13 Development Quality Thresholds

The following development quality thresholds are minimum mandatory standards and must be provided for a project to pass threshold.

3.13.1 Criteria Applicable to All Projects

1. All projects must demonstrate compliance with all applicable State and local building codes, which will be understood to include the latest version of the energy code and the accessibility code adopted by the Maryland Codes Administration into the Maryland Building Performance Standards (MBPS)[1].
2. All projects must comply with UFAS and any other applicable laws or requirements, including without limitation Section 504 of the Rehabilitation Act of 1973 ("Section 504"), the regulations implementing Section 504 at 24 CFR Part 8, the Americans with Disabilities Act ("ADA"), and the 2010 ADA Standards (as modified by HUD).
3. Provide a certification that the applicant, if funded, will employ a RESNET rater or BPI Certified Professional (Multifamily Building Analyst or Envelope Professional) to work with the development team using accepted practices and levels of professional care to achieve applicant- stated energy goals, DHCD energy requirements and the State of Maryland adopted energy codes. If the project is funded, the certified RESNET/BPI rater must be

engaged to review and verify the design, provide construction quality assurance and perform necessary in-progress performance testing and evaluation.

4. Integrated Pest Management – The project must implement an integrated pest management program equivalent to the HUD Healthy Homes Initiative.
5. High performance roofing specified for durability for new construction projects and when roofing is replaced for rehabilitation projects. Warranties must equal or exceed twenty (20) years for flat roofs and thirty (30) years for pitched shingled roofs.
6. Heavy (i.e. eighteen (18) to twenty (20) gauge) metal, solid core wood, or top quality foam filled fiberglass entry doors; unit entrance doors with durable frames and hardware for exterior entry; unit entry doors (twenty-two (22) gauge) for interior unit entry doors.
7. Laundry facilities must be adequate for the project and located for safe, convenient access. Minimum of one (1) washer and dryer for every fourteen (14) units in family projects and one (1) washer and dryer for every twenty-five (25) units in elderly projects. A common or shared laundry room must include, at a minimum, a utility sink, folding table, and seating. Additionally the common laundry room should have a means to drain should an overflow occur, dryers vented to the exterior and meet all ADA requirements.
8. All projects must have the capacity for high-speed Internet in each unit or in a community space. Internet service provided in each unit may be the responsibility of the tenant. If service is to be provided in community spaces, the services provided must include any necessary computer hardware and software as well as connections and allow reasonable accommodation during evenings and weekends for tenant work and academic schedules.
9. All products and materials must be installed in accordance with the manufacturer's installation instructions.

Comment [FH1]: These requirements are captured in the next section below.

3.13.2 Base Level Green Standards for All Projects

1. Demolition Plan – On projects where demolition will occur, submit a demolition plan which includes plans and/or specifications which identify sound practices for managing waste and hazardous materials. Specify methods which are environmentally sensitive and create less pollution. Identify opportunities for recycling.
2. Site work – Employ MDE 1994 2011 Standards for Soil Erosion and Sediment Control during construction. Limit area of disturbance to immediate work area. Site work at building pad, parking areas, and storm water structures must be completed with the approval and direction of the geotechnical engineer. Limit access to the site when vehicles or construction activity environmentally degrade the site.
3. Landscaping - New plantings shall utilize at least 50% native plantings. Select native, highly suitable, drought /disease tolerant plantings suitable for the project soil and microclimate. Where there are healthy large existing trees, make considerations for preserving mature

trees in the site plan. Utilize shade, windbreak and screening benefits of plantings in the project design. Protect trees during construction.

4. Construction Waste Recycling/Deconstruction The project must implement a construction waste recycling plan in which construction waste materials are collected, separated and recycled instead of being sent to a land fill. The plan shall include a record keeping function that shows the weight, type and disposition materials processed.
5. Air Quality- The project shall make primary use of all of the following Interior Air Quality criteria: Green Label carpeting and low toxic, low volatile organic compound (VOC) paint, primer, sealers and adhesives. The Architect must reference a national standard such as Green Seal, South Coast Air Quality Management District, Bay Area Air Quality Management District, or equivalent standard. In addition, unsealed engineered or composite wood products free of added urea formaldehyde must be used. See ANSI A208. The Architect will verify compliance of green products during the submittal review and construction verification process.
6. Chlorofluorocarbons (CFC) – Where new HVAC equipment is specified, there will be no use of CFC refrigerant. Where CFC refrigerant equipment is being removed, specify standards for capturing and disposal of CFC materials. For retained CFC refrigerant equipment, include a comprehensive inspection, maintenance and phase out or conversion plan.
7. Moisture and Mildew – Correct all observed areas of mold, mildew and moisture infiltration within the building. On existing structures, the Building Evaluation Report or environmental report will identify these areas. Plans or specifications must identify remedies and accepted practices for treatment.
8. Radon Gas – For Projects located in EPA Radon Area Zone 1 install a passive radon gas reduction pipe system with vertical venting convertible to mechanical venting unless testing indicates there is no radon gas hazard as determined by EPA standard. This requirement is only for projects where radon gas poses a legitimate hazard.
9. Recycling Plan, post completion – Provide space and containers on site for household recycling. Encourage residents to recycle. Address recycling in management plan.
10. Water Conserving features – Project water fixtures and faucets are to conserve water. Toilets – 1.6 gallons per flush or less, shower heads – 2.0 Gallons Per Minute (GPM). Bath and kitchen faucets 2.0 GPM or less.
11. Smoking Areas – Designate permitted smoking areas. Locate outside smoking areas at least twenty-five (25) ft. away from entry air intakes and residents' windows. No smoking in building interior common areas.
12. Site Location – New Construction projects are not located in FEMA Flood Zone Areas except zones C or X which are minimal risk areas.
13. Habitat Protection – Where development of the project removes prime habitat for a protected or endangered species, the developer must provide an offsite conservation lease

or easement for replacement habitat which is a minimum of three times the area of habitat lost in the development of the project or consistent with State or Federal requirements, whichever is greater. The conservation lease or easement shall be perpetual or a minimum of fifty (50) years.

3.13.3 Additional Criteria Applicable Only to New Construction and Gut Rehabilitation

1. The project must be certified under the current version of Energy Star New Homes for all new construction less than three (3) stories or Energy Star for Multifamily High Rise Buildings rating system.
2. The project must provide resident comfort and convenience through installation of an Energy Star central or split HVAC systems for community area(s) and units. At a minimum packaged thru the wall HVAC units must have duct work serving all major rooms and providing adequate air return capacity.
3. All appliances must be Energy Star qualified, including vented kitchen and bathroom exhaust fans. Clothes dryers and recirculating kitchen fans are excluded.
4. Install Energy Star qualified windows in accordance with current Energy Star Standards as appropriate to project location, except high rise.
5. Except for gut rehabilitation projects, paving at the dumpster pad, the access drive to the dumpster, and any turns or return path of the garbage truck route must equal local requirements for standard duty residential roadway or provide specifications which indicate a stone base of eight (8) inches or greater with the combination thickness of the asphalt base and top coat being at least five (5) inches.
6. Bi-fold doors will not be used unless space requirements mandate.

3.14 Additional Criteria Applicable Only to Rehabilitation

1. Total hard construction costs (exclusive of fees or overhead items) of rehabilitation for projects must be at least $15,000 per unit and supported by a building evaluation report performed by an engineer or other qualified professional.
2. The scope of work must include exterior renewal by providing any needed repairs and cleaning of finishes to provide an improved visual impact on the neighborhood.
3. Project designs must include complete replacing or upgrading of aging finishes, fixtures, equipment or systems and site conditions that are nearing the end of their useful life or show signs of excessive wear, deterioration, are in need of repair, are obsolete or inefficient.
4. Newly installed mechanical ventilation must terminate at the exterior of the building, not the attic or other unconditioned space. To the extent feasible, existing mechanical ventilation should be retrofitted to terminate at the exterior of the building.

3.14.1 Base Level Energy Standards for Rehabilitation Only

An energy audit is not required at the time of application for a rehabilitation project. New Construction, Gut rehabilitation and Change in Use projects do not need to submit an energy audit. Gut Rehabilitation is defined, for energy conservation purposes, as demolishing the building to the building's exterior wall structural framing and removing and replacing the existing MEP systems.

If a project receives a competitive award of LIHTC and/or RHFP, a comprehensive energy audit must be submitted to DHCD within 90 days of issuance of a Reservation Letter. For non-competitive MBP and RHW/LIHTC projects, the energy audit should be submitted on a schedule set by the underwriter and construction manager.

As determined by the comprehensive energy audit, rehabilitation projects must achieve a minimum of 15% energy savings for the rehabilitated building(s) over the existing building condition, or install all energy conservation measures that have a Savings to Investment Ratio (SIR) of 2.0 or greater. The SIR standard may be used if a rehabilitation project previously completed an energy efficiency retrofit and the 15% standard cannot be achieved.

Energy audits and resulting reports must be performed by a DHCD listed Qualified Auditor and be prepared in accordance with DHCD Energy Audit Guidance.
http://dhcd.maryland.gov/HousingDevelopment/Documents/Qualified_Auditor_List.pdf

1. Install Energy Star qualified heating, ventilation, and air conditioning (HVAC) systems and components when HVAC systems and their components are replaced. Replacement HVAC units must be at least 10% greater efficiency than code minimum when Energy Star equipment isn't available. The closest efficient system available to 10% must be used if a model meeting the 10% efficiency minimum is not available.
2. Install programmable thermostats where thermostats are installed or replaced. Project specifications must include thermostats to be programmed in accordance with Energy Star thermostat set-back guidance by the installer as part of equipment installation and commissioning.
3. Install Energy Star qualified appliances when appliances are replaced. (Including vented kitchen and bathroom exhaust fans, excluding clothes dryers and recirculating kitchen fans).
4. Install Energy Star qualified lighting fixtures or Energy Star label compact fluorescent or LED lamps in conventional fixtures the combination of which make up 70% of the interior lighting when lighting replacement is included in the scope of work.

5. Install Energy Star qualified windows in accordance with current Energy Star Standards as appropriate to project location when windows are replaced. (excluding high-rise buildings)
6. A building draft stopping and air sealing scope of work is to be included in the project specifications with minimum verification. Schematic drawings indicating typical air sealing details for the project building type(s) is to be included in Exhibit F.1 Construction Threshold Information: SCHEMATIC DOCUMENTS. Air sealing details must include, at a minimum, air sealing for unit compartmentalization as well as air sealing the buildings thermal envelope; including attic and basement/crawl space. Typical details must include sealing inherent design deficiencies specific to the building type(s). Air sealing detail should follow best practices as found in the Building Technologies Program Air Leakage Guide.
7. A building duct sealing and insulation scope of work included in the project specifications (for ducts located outside the building envelope with minimum verification completed by sampling 10% of the units, utilizing a duct blaster or similar diagnostic test. Schematic drawings for typical duct air sealing and insulation details is to be included in the Application Submission Package. It may not be feasible to insulate ducts that are not accessible. Construction Threshold Information: SCHEMATIC DOCUMENTS. See Energy Star or the Department of Energy *Building America Best Practice*, Volume 4.
8. Heating and cooling equipment must be sized in accordance with the Air Conditioning Contractors of America (ACCA) Manuals, Parts J and S, or ASHRAE handbooks for the post-rehabilitation building condition. The smallest available size may be used when the calculated size is smaller than the available equipment. Calculation worksheets must be submitted to DHCD before Viability Commitment if the project is approved for funding.
9. A project specific Operations and Maintenance (O&M) manual shall be created to optimize the energy efficiency of the equipment installed in the project. The O&M manual will include: evaluation criteria, operation parameters, maintenance schedules, checklists for systems and equipment on the project. The building maintenance staff will utilize the O&M manual as an operational standard.
10. The project management staff will provide continuing tenant education and reminders on how to conserve energy. Minimal intervals will be at tenant turnover and heating/cooling changeovers in the spring and fall. Property Management Staff will have written material containing energy saving tips distributed to tenants.

3.14.2 Lead Hazard Elimination

Upon completion of any rehabilitation, all existing buildings must be certified by the Maryland Department of the Environment (MDE) as lead-safe and meet HUD/EPA clearance standards. All abatement and clean-up must be carried out in accordance with MDE requirements (COMAR 26.02.07, Procedures for Abating Lead Containing Substances in Buildings). All abatement contractors or subcontractors must be certified and accredited by MDE.

All projects originally constructed before 1978 must register with MDE's lead poisoning prevention program to obtain certain limited liability from lead-related claims.

Additionally, all contractors and subcontractors engaging in the following activities on projects built before 1978 must be Lead-Safe Certified, as mandated by the Federal Environmental Protection Agency Lead-Based Paint Renovation, Repair and Painting (RRP) Rule:

- Remodeling and repair/maintenance;
- Electrical;
- Plumbing;
- Painting;
- Carpentry; and
- Window Replacement.

For more information regarding licensing procedures and guidelines please contact the EPA Lead Safe Hotline, 1-800-424-5323 or refer to: http://www.epa.gov/getleadsafe.

For information on abatement contractors or subcontractors, registration forms, requirements, and fees for the MDE lead poisoning prevention program contact the MDE Lead Hotline, 1-800-776-2706 or refer to:

http://www.mde.state.md.us/programs/Land/LeadPoisoningPrevention/Pages/Programs/LandPrograms/LeadCoordination/index.aspx.

4 Competitive Scoring Criteria

Projects that meet all Threshold Criteria will be evaluated against the Competitive Scoring Criteria. The results of this competitive scoring process will determine the award of competitive LIHTC and RHFP within a funding round.

The scoring criteria are designed to ensure that awards are made to project proposals that have strong sponsors, serve critical housing needs for households with very low income and persons with disabilities or special needs, contribute positively to their communities, leverage non-state resources, and achieve balance between costs and development quality, sustainability, and durability.

Multifamily Bond Program and Rental Housing Works Terms and Conditions

Applicants seeking only MBP and RHW financing and associated non-competitive LIHTC must meet all Threshold Criteria in Chapter 3. Such projects are not required to compete with others but will be scored using the Competitive Scoring Criteria and **must achieve a minimum total score of ninety-two (92) points** to be awarded MBP and RHW funds and non-competitive LIHTC. Additionally, projects must achieve **at least 30 points within the Team Experience category** in Section 4.1.1, **at least twelve (12) points within the Developer Financial Capacity category** outlined in Section 4.1.3, and **at least 10 points within the Development Quality Standards** in Section 4.6.

Projects seeking FHA Risk Sharing Insurance for MBP financing must meet all Threshold Criteria. Such projects are not required to compete with others but will be scored using the Competitive Scoring Criteria and **must achieve a minimum total score of ninety-two (92) points including at least 32 points in the Team Experience category** in Section 4.1.1 **(with no individual team member earning less than three (3) points below the respective maximum score), at least fourteen (14) points within the Developer Financial Capacity category** outlined in Section 4.1.3, **and at least 12 points within the Development Quality Standards in Section 4.6 below.**

See Section 6.2 for additional information on MBP.

Scoring Summary Table	Maximum Possible Points
4.1 Capacity of Development Team	**74 Total Points**
4.1.1 Development Team Experience	42 points
4.1.2 Deductions from Team Experience Score	Negative 10 points
4.1.3 Developer Financial Capacity	18 points
4.1.4 Nonprofits (NPs), Public Housing Authorities (PHAs) and Minority/ Disadvantaged Business Enterprises (MBE/DBEs)	14 points
4.2 Community Context	**16 Total Points**
4.2.1 Community Impact Projects	16 points*
4.2.2 Communities of Opportunity	16 points*
4.2.3 Defined Planning Areas	12 points*
4.3 Transit Oriented Development	**8 Points**
4.4 Public Purpose	**51 Total Points**
4.4.1 Income Targeting	14 points
4.4.2 Targeted Populations: Non-Elderly PWD or Special Needs	10 points
4.4.3 Family Housing	8 points
4.4.4 Tenant Services	8 points
4.4.5 Mixed Income Housing	4 points
4.4.6 Preservation of Existing Affordable Housing	4 points
4.5 Leveraging and Cost-Effectiveness	**20 Total Points**
4.5.1 Direct Leveraging	10 points
4.5.2 Operating Subsidies	10 points
4.5.3 Construction or Rehabilitation Cost Incentives	Negative 8 points
4.6 Development Quality	**31 Total Points**
4.6.1 Green Features	12 points
4.6.2 Energy & Water Conservation & Sustainability	6 points
4.6.3 Project Durability and Enhancements	13 points
4.7 State Bonus Points (maximum of10 points)#	**See note**
Total	**200**

* Project cannot receive points under Community Impact, Communities of Opportunity, and Defined Planning Area categories.
# State Bonus Points may be awarded outside of the 204 point scale.

4.1 Capacity of Development Team

To balance the value of experience and the importance of providing opportunities for participation by community based organizations and historically disadvantaged businesses, DHCD considers both the capacity and the composition of the Development Team that will undertake a project.

4.1.1 Development Team Experience (42 maximum points)

DHCD will award up to forty-two (42) points based on an assessment of Development Team capacity as further described below. Capacity will be based on the demonstrated relevant experience and qualifications of the Primary Development Team. DHCD will evaluate the Primary Development Team (see Section 3.1 for Primary Development Team members) based on their record of accomplishment during the past five years with projects that are similar in size, scope, and complexity to the proposed project. Primary Development Team members without appropriate experience should establish partnerships with experienced entities. In the case of a joint venture, points will be awarded based on the capacity and experience of the controlling member of the joint venture.

Points will be available as detailed on the following chart:

Development Team Capacity				
Criteria	***Developer***	***General Contractor***	***Architect***	***Property Manager***
The entity has a consistent and successful track record during the past five years with projects that are similar to the proposed project and has shown the ability to remedy problems.	14-18 points	6-9 points	5-6 points	6-9 points
The entity has an overall successful track record during the past five years but may not have sufficient experience, has not always promptly addressed problems, or may not have sufficient experience with similar projects.	9-13 points	3-5 points	3-4 points	3-5 points
The entity has an inconsistent track record during the past five years, may not have sufficient experience, has not promptly addressed some problems, or may not have sufficient experience with similar	4-8 points	1-2 points	1-2 points	1-2 points

projects.				
The entity has limited or no experience has a record of problems that were not promptly addressed, or has limited or no experience with similar projects.	0-3 points	0 points	0 points	0 points

4.1.2 Deductions from Team Experience Score (Negative 10 points maximum)

Points will be deducted from the Development Team Capacity score for any Developer (up to six (6) points) or property manager (up to four (4) points) with a record of the following within the past five (5) years:

Processing Timeframes:

- For projects currently in DHCD's pipeline, failure to meet DHCD's loan processing schedules construction progress or completion timeframes.

Compliance Issues:

Consistent failure to promptly resolve compliance matters as evidenced by outstanding IRS Form 8823 or other compliance enforcement action by DHCD, including but not limited to the following:

- Failure to maintain income targeting as required under any MBP, RHFP, RHW, LIHTC or other DHCD funding agreements;
- Failure to maintain adequate documentation of tenant eligibility or qualified basis;
- Failure to timely recertify tenant incomes or continued occupancy by unqualified households; or
- Failure to promptly resolve compliance matters arising from commitments in prior applications that led to the award of points under a prior QAP, Guide, or funding round, including but not limited to failures to:
    - Provide promised tenant services;
    - Maintain promised preferences within the set-aside of units or tenant selection criteria for persons with disabilities or special needs populations;
    - Obtain non-State leveraged funding as committed in a prior application; or
    - Deliver promised development features, amenities, or as-built specifications without prior approval of DHCD.

<u>Asset Management Issues:</u>

- Untimely submission of required DHCD asset management documents (including, but not limited to, annual audits, operating statements, and budgets);
- Properties with annual physical inspection or management performance evaluations with ratings of "Below Average" or "Unsatisfactory";
- Consistent history or pattern of failing REAC scores after the HUD inspection and cure period;
- Failure to maintain a current management agreement on file with DHCD
- Failure to comply with an approved AFHMP; and
- Late payments of any type including cash flow billings.

<u>Construction Management Issues:</u>

- Failure to pay the general contractor (in accordance with the construction contract) for work-in-place;
- Inability to resolve construction related issues, which result in an unreasonable delay of project completion; and
- Construction cost increases after closing that are not approved by DHCD.

4.1.3 Developer Financial Capacity (18 maximum points)

Up to 18 points may be awarded based on the financial capacity of the Developer, which, as defined in Section 3.1, includes the project sponsor, guarantor, and general partner/managing member with an ownership interest in the project's ownership entity whether such roles are held by individuals, corporate entities, partnerships or limited liability companies. Points will be awarded as described below. The required financial statements must include calculations of Total Assets, Total Liabilities, Current Assets, and Current Liabilities, and DHCD will use these figures to assess the Developer's financial capacity, assessing whether the Developer has access to sufficient working capital to carry the project through pre-development and/or unexpected challenges and net worth (net assets for nonprofit organizations) sufficient to provide applicable guarantees of project completion and operations

Points will be awarded based on the combined net worth (net assets for nonprofit organizations) of the Developer (Total Assets less Total Liabilities), as follows:

- Over 25% of Total Development Cost (TDC)....................................eight (8) points
- Less than 25% but at least 10% of TDC ....four (4) points
- Less than 10% of TDC ....zero (0) points

Points will be awarded based on the combined net liquid assets of the Developer (Current Assets less Current Liabilities), as follows:

- Over 10% of TDC .... ten (10) points
- Over 4% but less than 10% of TDC ....eight (8) points
- Between 2% and 4% of TDC ....four (4) points
- Under 2% of TDC ....zero (0) points

4.1.4 Nonprofits (NPs), Public Housing Authorities (PHAs) and Minority/Disadvantaged Business Enterprises (MBE/DBEs) (14 maximum points)

NPs and PHAs exist for charitable and/or mission-driven public purposes, and by their nature bring perspectives on and accountability to the residents they serve. DHCD wants to encourage NP and PHA perspectives in the planning, development, management, ownership, and ongoing oversight of affordable housing. DHCD also wants to encourage MBE/DBE participation and perspectives in the planning, development, management, ownership and ongoing oversight of affordable housing. Therefore, DHCD will award points to project proposals with material and meaningful participation by NPs, PHAs, and/or MBE/DBEs. This participation is expected to reflect the actual capabilities of the entity. Further, DHCD is interested in helping to support and sustain the capacity of a range of NPs, PHAs and MBEs/DBEs by providing opportunities for them to partner with experienced professionals to learn and strengthen their housing development, management, and ownership capabilities.

PHAs perform the unique mission of providing decent, safe rental housing for very low-income families, the elderly, and persons with disabilities. There are over 19,000 public housing units in the state of Maryland housing over 47,000 people. These units are an important resource for some of the state's most vulnerable populations. DHCD wants to support and encourage the preservation, rehabilitation, and transformation of public housing resources and the coordination with such HUD programs as the Choice Neighborhoods/HOPE VI and Rental Assistance Demonstration.

To qualify for participation as an MBE/DBE, the applicable entity must have been certified as an MBE/DBE by either the Maryland Department of Transportation (MDOT) pursuant to the MBE/DBE programs or by a comparable certification program operated by another Maryland political jurisdiction.

Points may be awarded for the categories described below when the project involves:

- a NP that is tax-exempt under Section 501(c) (3) or 501(c) (4) of the Internal Revenue Code and independent of any for-profit entity;

- a PHA; or
- A certified MBE/DBE.

The number of points awarded will be determined based on the role of the NP, PHA, or MBE/DBE and its demonstrated capacity to undertake its role in a project of the type and scope proposed.

Projects shall be eligible for a maximum of fourteen (14) points under this section as detailed in the four (4) categories below. The same entity may receive points in multiple categories. For example an MBE/DBE, Community-Based NP (defined below), or PHA could have a 10% developer/owner role in Category 2 and also receive points in Category 4 as a service provider.

Category 1 (maximum of eight points): Eight (8) points will be awarded when the NP, PHA, or MBE/DBE has a controlling ownership interest (51% or greater) in the project and, for the NP entity, is a Qualified Nonprofit within the meaning of Section 42(h)(5)(B) and (C) of the Internal Revenue Code which, among other things, requires that the entity:

1. Materially participate in the development and management of the project throughout the compliance period, and
2. As determined by DHCD, is neither controlled by nor affiliated with any for-profit entity, and
3. Has as one of its exempt purposes the fostering of low-income housing.

Category 2 (maximum of six points): Up to six (6) points will be awarded to a PHA, MBE/DBE, or a Community-Based NP if the entity has less than 50% but more than 10% interest in the general partner or managing member of the project owner

A Community-Based NP means:

- Community Housing Development Organization (CHDO) certified by DHCD or by a participating jurisdiction; or
- Community Development Corporation (CDC) or a nonprofit or charity organized under Section 501(c)(3) or 501(c)(4) of the Code, which: (i) has at least a one-year history of serving the local community in which the project is located, (ii) has an existing physical location in the local community (or for a project that serves the homeless or veterans within a Community-Based NP's service footprint) other than space that would be provided, if any, in the proposed project, and (iii) the project is within its defined service area.

Category 3 (maximum of eight points): Up to four (4) points may be awarded to a project for each NP, PHA, or MBE/DBE that is involved as a member of the Primary Development Team as the general contractor, architect, or property management company.

Category 4 (maximum of eight points): Up to four (4) points may be awarded for the first NP, PHA or MBE/DBE entity, and up to two (2) points for each additional NP, PHA or MBE/DBE entity that :

1. Is a member of the Secondary Development Team as a civil engineer, attorney, accountant, and/or other specialized professional service provider; or
2. Performs another important role with the goal of building its capacity to develop, manage, construct, design, or own affordable housing in the future. Examples include: (a) providing consulting or tenant services, (b) participating in the project in some other learning role, (c) performing as a joint venture partner with the contractor to perform some defined portion of the contractor role, or (d) entering into a joint venture or subcontracting with the architect to perform some defined portion of the design or supervision work. In the case of contractor or architect joint venture, points for contractor/architect capacity in Section 4.1.1 shall be based solely on the primary contractor/architect and no points shall be deducted in that category based on the lesser experience of the subcontractor/joint venture partner.

   To receive points as a Secondary Development Team member (see Section 3.1), the entity must show sufficient experience to carry out the proposed role. Such experience need not be on previous affordable housing projects.

If an NP, PHA, or a MBE/DBE is a member of the Primary Development Team(see Section 4.1) and receives less than 50% of the points under Section 4.1.1 (Development Team Experience) above, no points for participation will be awarded in this Section 4.1.4. Additionally, if the entity's prior performance results in negative points in Section 4.1.2, the same amount of negative points will be applied to the points awarded in this Section 4.1.4. Points will not be awarded under this Section 4.1.4 if DHCD determines that the role proposed for the entity is not a role that it has the experience or competence to perform.

4.2 Community Context

Consistent with the State's housing priorities and the Code requirements, DHCD will award points to projects in certain geographic areas. Ideally, housing opportunities for low income households would be reasonably dispersed across the state, allowing physical mobility based on a household's own needs and preferences and, in so doing, promoting social and economic mobility for those same households. Achieving this end requires that the state invest in improving neighborhoods that already serve low income tenants and providing new housing options in historically less affordable communities that provide residents access to a broad array of jobs, services, and amenities.

Projects may only receive points under one of the following categories: 4.2.1, 4.2.2, or 4.2.3.

4.2.1 Community Impact Projects (16 maximum points)

Some projects not only provide needed affordable housing, but provide synergy, contributing to and expanding upon broader State and local community development investments. DHCD recognizes such projects as outlined below.

- Sixteen (16) points will be awarded to any elderly or family project, new construction or rehabilitation, in a QCT or DDA (this does not include any State-designated DDA under the authority granted in §42, more commonly referred to as a "state-designated basis boost") that contributes to a concerted community revitalization plan.

To qualify for points in this category, a concerted community revitalization plan must meet the following requirements:

a) Officially adopted or endorsed by a Local Government or created with Local Government involvement;

b) Consistent with Maryland's Smart Green and Growing Initiatives and PlanMaryland;

c) established to increase investment in the community or build from an existing community asset;

d) Developed and approved in accordance with local planning requirements;

e) Includes evidence of community and stakeholder engagement;

g) Has a defined geographic boundary, that includes the proposed site or is focused within a single municipality, jurisdiction, or targeted area;

h) If there is a housing component in the plan, the plan should include rehabilitation or new construction of rental housing as a goal for the community;

i) Includes details of implementation measures along with specific time frames for the achievement of such policies and housing activities; and

j) Provides a list of other investment occurring or planned within the immediate area;

A community revitalization plan will be considered ineligible if it:

a) Was formulated solely by a development team member. This requirement shall not exclude a plan which included development team member(s) as a participant in the planning process;

b) Is a comprehensive plan, consolidated plan, municipal zoning plan or land use plan; unless such plan includes a neighborhood-based or other location specific strategy that articulates where development may occur; or

c) is not relevant to current neighborhood conditions.

Documentation must be submitted as part of the Application Submission Package that supports each of the elements above, including:

a) certification form executed by both the applicant and the local government through the local planning department or zoning board that demonstrates that the plan meets the requirements of DHCD;
b) a copy of the full revitalization plan; and
c) a map of area targeted by the plan identifying location of project.

4.2.2 Communities of Opportunity (16 maximum points)

Sixteen (16) points will be awarded to family projects with reasonable access to jobs, quality schools, and other economic and social benefits, as demonstrated by meeting at least one of the following two criteria:

1. Be located in a "Community of Opportunity" as shown on the Maryland QAP Comprehensive Opportunity Maps posted to the DHCD Web site at http://www.dhcd.state.md.us/GIS/multifamily/index.html

   The Communities of Opportunity designated on the Maryland QAP Comprehensive Opportunity Maps are based on a "Composite Opportunity Index" developed by DHCD. The Composite Opportunity Index uses publicly-available data and is based on three major factors: community health, economic opportunity, and educational opportunity. To be designated a Community of Opportunity, and mapped as such to the Maryland QAP Comprehensive Opportunity Maps, the community must have a Composite Opportunity Index that it is above the statewide average.

   The three major indicators that comprise the Composite Opportunity Index are:

- *Community Health*: The community health indicator represents the wealth and quality of life in a community relative to the State average. The community health indicator has six components, as follows:

    - Median household income obtained from the U.S. Census' American Community Survey (ACS) 2007-2011, five-year estimate. Household income is positively correlated with community health. Higher household incomes support a more diversified economic base and enhance the tax basis and services of its local government.

    - Ratio of owner-occupied to all occupied housing units (a proxy for homeownership rate) obtained from the ACS 2007-2011, five-year estimate. A higher homeownership rate indicates the economic stability of a community, which is positively correlated with community health.

    - Median value of owner-occupied housing units obtained from the ACS 2007-2011, five-year estimate. This statistic indicates the strength of a community's real estate market relative to the average statewide market condition and is highly correlated with community health.

    - Population growth between 2010 and 2012 obtained from the Economic and Social Research Institute (ESRI) 2012 community profile. A component of population growth is the number of people relocating to a community so this measures the quality of life in a community and is positively correlated with community health.

    - Poverty rate, obtained from the ACS 2007-2011, five-year estimate. The poverty rate highlights the detrimental impact of concentrated poverty on quality of life in a community. This variable is inversely correlated with community health.

    - Property vacancy rate obtained from the ESRI 2012 community profile. An elevated property vacancy rate negatively impacts community health. Vacant property is often correlated with higher crime and depreciation of property values in a community.

- *Economic Opportunity*: Economic opportunity measures the extent to which a community provides employment opportunity and mobility to its residents. Employment opportunity is measured by the following variables:

- Prevailing unemployment rate obtained from the ACS 2007-2011, five-year estimate. This variable, which measures employment opportunity in a community, is inversely related with economic opportunity.

- Median commute time to work obtained from the ACS 2007-2011, five-year estimate. The commute time measures proximity to regional employment opportunities and is inversely related with economic opportunity.

- *Educational Opportunity*: Educational opportunity measures the outcomes of student performance and educational attainment in the community. This indicator is measured by the following variables:

  - Maryland School Assessment (MSA) scores, proficient and advanced, for elementary, middle, and high school students obtained from Maryland Department of Education for the 2011/2012 academic year. These scores play a key role in determining educational advancement as well as opportunities available to students. The MSA scores are positively correlated with educational opportunity.

  - Percent of population with a college degree (both undergraduate and graduate degrees) obtained from the ACS 2007-2011, five-year estimate. This variable is positively related to educational opportunity.

  - Percent of population with no high school diploma, obtained from the ACS 2007-2011, five-year estimate. This variable is inversely related with educational opportunity.

2. Be located in a geographic area defined by applicable law as a community of opportunity for affordable family housing or identified as such by an order or consent decree entered by a federal or State court of competent jurisdiction or by a settlement agreement to which DHCD or a local government in Maryland is a party. As of the publication of this Guide, DHCD is aware of two such settlements:

1) Baltimore City: the case of *Thompson v. HUD*. The following link provides information on census tracts designated as Communities of Opportunity in the *Thompson* case: http://www.brhp.org.
2) Baltimore County: the Conciliation Agreement among HUD, several complainants, and Baltimore County to designate 116 census tracts in Baltimore County as Communities of

Opportunity. These census tracts are outlined in Exhibit F of the Conciliation Agreement found at the following website:
http://www.baltimorecountymd.gov/Agencies/planning/fairhousing/hudconciliation.html

As detailed in Section E.3 of the Qualified Allocation Plan, all family projects located in a Community of Opportunity will qualify for the State Basis Boost without prior CDA approval.

4.2.3 Defined Planning Areas (12 points maximum)

Projects that did not receive points in Section 4.2.1 or 4.2.2, may receive up to a maximum of 12 points in this section as detailed below.

- **Category 1:** 8 points for projects in a Rural Area. For purposes of this section, a rural area includes any area eligible under the U.S. Department of Agriculture's Rural Development programs or any area in Allegany, Caroline, Dorchester, Garret, Somerset, Washington, Wicomico, or Worcester Counties that are not otherwise CDBG entitlement communities or HOME Participating Jurisdictions.
- **Category 2:** 6 points for projects located in any of the following: Certified Heritage Areas within county designated growth areas; Sustainable Communities; Empowerment Zones; Federal or Maryland Enterprise Zones; Main Street/Maple Street Maryland communities; or Rural villages designated in county comprehensive plans as of July 1, 1998 and where there is evidence of other recent public investment in the plan area.
    - Sustainable Communities Program is a place-based designation offering a comprehensive package of resources that support holistic strategies for community development, revitalization and sustainability. The following link provides a list of approved Sustainable Communities:
    http://dhcd.maryland.gov/Communities/Pages/dn/default.aspx
- **Category 3:** 4 points for Elderly Housing project in Communities of Opportunity.

4.3 Transit Oriented Development (TOD) (8 maximum points)

DHCD will award up to eight (8) points to TOD projects as follows:

- 8 points to a project that is part of a MDOT-designated TOD. A list of MDOT-designated TODs is available at:
http://www.mdot.maryland.gov/newMDOT/Planning/TOD/index.html
- 8 points to a project that is located within a one-half (1/2) mile radius of a passenger boarding and alighting location of a planned or existing transit rail stop or station;
- 8 points to a project located within one-half (1/2) mile radius of two separate bus lines, where passengers can transfer from one line to another;
- 8 points to a project located in an area defined as rural by DHCD or USDA

- 8 points to a project that is family housing in a Community of Opportunity located within one (1) mile radius of an existing or planned bus line; or
- 4 points to a project located in a transit-proximate development that promotes walkability and/or bike-friendly land use with easy access to mass transit and retail store locations with a WALK Score of 50 or greater.

4.4 Public Purpose

Regardless of project location, DHCD is particularly concerned about the housing needs of tenants with the lowest incomes and those whose needs are particularly ill served by the marketplace, including both low income families with children and households with disabilities or special needs. Also, the Internal Revenue Code expects States to provide certain preferences for LIHTC projects meeting these needs.

4.4.1 Income Targeting (14 maximum points)

All LIHTC applicants must commit to rent at least 40% of units to households with incomes at or below 60% of the area median or at least 20% of units to households at or below 50% of area median income. Additionally, any unit financed with RHFP or RHW must be rented to households at or below 60% of area median income. To encourage sponsors to income-restrict additional units and to target units to lower income households, DHCD will award points for income targeting in excess of these minimum requirements.

A project will receive four (4) points if at least 10% of the income restricted units in the project will be income-restricted at 30% of the area median or below for the LIHTC compliance period (including the extended use period). These points are available (1) if the project rent restricts those units at the 30% area median income level for the compliance period or (2) for units supported by the award of a project based housing choice voucher contract (or a DHCD approved equivalent form of project based assistance) with a term of fifteen (15) years or more. DHCD will consider project based housing choice vouchers awarded through a recognized mobility program in awarding points in this section. At this time, DHCD is aware of one such program being operated by the Baltimore Metropolitan Council.

Up to ten (10) points will be awarded to any project regardless of location based on the weighted average of area median income targeting by bedroom in a project. For purposes of this calculation, the lowest income level used will be 30% of area median income. SRO or efficiency units will be counted as 0.67 bedrooms, and all weighted averages will be rounded to the nearest full percentage point. To calculate the weighted average, applicants should use the following process.

- Determine the number of income-restricted bedrooms serving each percentage of area median income by multiplying the number of units of a given size by the number of bedrooms per unit.
- Multiply each income-restricted bedroom by the maximum income target and add the sum of those totals together.
- Divide the result by the total number of income restricted bedrooms and round to the nearest full percentage point to determine the weighted average.

DHCD will award points based on the weighted average as follows depending on whether or not the proposed project provides family housing in a Community of Opportunity:

Points	**Average Area Median Income – Family projects located in a Community of Opportunity (ONLY)**	**Average Area Median Income – All other projects**
10 points	30-40%	30-32%
9 points	41-45%	33-35%
8 points	45-50%	36-38%
7 points	51-53%	39-41%
6 points	54%	42-44%
5 points	55%	45-47%
4 points	56%	48-50%
3 points	57%	51-52%
2 points	58%	53-54%
1 point	59%	55%
0 points	60%	>55%+

Example

A one hundred (100) unit rental housing project consists of twenty-five (25) one-bedroom units, fifty (50) two-bedroom units and twenty-five (25) three-bedroom units. The one-bedroom units will be rented to families with incomes of no more than 50% AMI. Twenty of the two-bedroom units will be rented to families with incomes of no more than 60% AMI, twenty more will be rented to families with incomes of no more than 40% AMI, and ten (10) will be rented to families with incomes of no more than 30% AMI. Ten (10) of the three-bedroom units will be rented to families with income of no more than 50% AMI, and the remaining fifteen (15) three-bedroom units will be rented to families with incomes of no more than 40% AMI.

Step 1. Find the number of bedrooms serving each income level.

60% AMI – 20 2-bedrooms or 40 bedrooms [20 x 2 = 40]
50% AMI – 25 1-bedrooms and 10 3-bedrooms or 55 bedrooms [(25 x 1) + (10 x 3) = 55]
40% AMI – 20 2-bedrooms and 15 3-bedrooms or 85 bedrooms [(20 x 2) + (15 x 3) = 85]
30% AMI – 10 2-bedrooms or 20 bedrooms [10 x 2 = 20]

Step 2. Multiply the number of bedrooms at each income level by the maximum income level for those bedrooms and add the results.

40 bedrooms x 60% of AMI = 2,400
55 bedrooms x 50% of AMI = 2,750
85 bedrooms x 40% of AMI = 3,400
20 bedrooms x 30% of AMI = 600
Total = 9150

Step 3. Divide the result by the total number of rent restricted bedrooms to get the weighted average AMI per bedroom.

9,150 ÷ 200 = 45.75% of AMI, rounds to 46% of AMI.

Step 4. Use chart above to determine number of points for 46% of AMI.

46% AMI results in eight (8) points if it is a family project in a Community of Opportunity and five (5) points for all other types of projects.

4.4.2 Targeted Populations: PWD or Special Needs (10 maximum points)

DHCD strongly supports the creation of permanent housing opportunities integrated across the State for targeted populations, particularly those with disabilities who rely primarily on Supplemental Security Income (SSI) or Social Security Disability Income (SSDI). DHCD will award points for projects that set aside up to 25% of units in a project for targeted populations. To qualify as a targeted population set-aside unit, the housing unit must be:

- Permanent housing. Transitional housing or other facilities with limits on the term of occupancy do not qualify as permanent housing;
- Income and rent restricted at no more than 50% of the area median income; and
- Set aside for a household that is headed by one of the following (Projects may select only one targeted population):
  - PWDs;
  - Persons with special needs;
  - Homeless;
  - Youth aging out of foster care;
  - Veterans; or
  - Persons transitioning from a correctional facility or other State facility or institution.

  To receive points in this category, targeted populations in elderly projects must meet DHCD's age-restrictions. The units from the 5% threshold requirement in Section 3.5.2 may be counted toward the total percentage for scoring in this section, if the threshold units are income and rent restricted at or below 50% AMI (the threshold, at a minimum, only requires targeted at or below 60% AMI). Points will be awarded as follows:

Points	Set aside for targeted population
6	15% to ≤25%*
5	13% to <15%
4	12% to <13%
3	10% to <12%
2	8% to <10%
1	6% to <8%

*Projects with more than 25% of the units for a targeted population will receive zero points in this category except that projects targeting homeless and at risk veterans and their families under the Department of Veterans Affairs Enhanced Use Lease (EUL) Program may exceed the 25% target population limit and still qualify for 6 points.

Applicants seeking points under this section for PWD must agree to provide notice of unit availability to and accept tenant referrals from DHMH and MDOD. Applicants seeking points under this section for a target population other than PWD must specifically market set-aside units to the targeted population(s) as evidenced by a memorandum of understanding or other formal written agreement between the owner, the property manager, and one or more local public or nonprofit service providers that regularly work with the targeted populations being served by the project.

Units that receive points under this category must be reserved exclusively for the target population. If a project is unable to fill a unit with the targeted population after a sixty (60) calendar day referral period, the unit may be leased to another household with income at 50% AMI or below. The next available 50% AMI unit in the Project shall be marketed to the Project's original targeted population until the project is in compliance with percentage for which it received points. The sixty (60) calendar day period at lease-up will be measured from the date upon which the project achieves 80% occupancy and at turnover will be measured from the date upon which the unit is determined ready for occupancy following move-out by the prior tenants and completion of any unit turn cleaning, repairs, or maintenance.

4.4.2.1 Project-based Rental Assistance for Targeted Populations (4 possible points)

An additional four (4) points shall be awarded to projects with project-based subsidies for **all of** the identified targeted population units so that the units serve extremely low income households (at or below 30% AMI). Documentation must be provided to show that the project-based subsidy will be in place for a minimum of five (5) years. Project-based rental assistance may be provided by (a) a local public housing authority or (b) equity provided by the Developer for a term of 15 years per section 4.8.8.3 of this Program Guide. Projects that receive 4 points in this category may not also receive points under Section 4.4.2.2..

4.4.2.2 Section 811 Project Rental Assistance (4 possible points)

In 2013 and 2015, DHCD was awarded approximately $20 million in grant funds from HUD under the Section 811 Project Rental Assistance Program (PRA). These HUD funds enable DHCD to provide project-based Section 811 rental assistance for approximately 300 units that will be occupied by extremely low income non-elderly PWD referred by DHMH and MDOD.

To support implementation of the PRA Program projects with non-elderly PWD units that meet the Section 811 requirements (as explained below) will receive 4 points if they agree to accept, if offered by DHCD, Section 811 project-based subsidies on their non-elderly PWDs units and to comply with the requirements of the PRA Program. The PRA Program represents a federal funding stream and may trigger various federal regulations, including but not limited to Davis-Bacon. Section 811 PRA MAY NOT be used in any project that has more than 25% of its targeted units set aside for PWD. Information on Maryland's PRA Program is posted to DHCD's website at http://dhcd.maryland.gov/HousingDevelopment/Pages/section811/Section811.aspx

Additional information about the Section 811 program can be found at:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/grants/section811ptl.

To receive these points, a project must be eligible to receive Section 811 funding and must not already have project-based rental assistance in place for the targeted units. Only family projects with one or two bedroom units for the targeted population are eligible to receive points under this section. As of March 2015, PRA Program units are available statewide.

4.4.3 Family Housing (8 maximum points)

DHCD encourages the development of housing appropriate to the needs of families with children. To qualify for additional points, a project cannot age-restrict its units and will receive points based on the provision of units suitable to larger households.

- Three (3) points will be awarded to projects where at least 60% of the units are 2-bedrooms or larger;
- Five (5) additional points will be awarded to projects where at least 15% of units are 3-bedrooms or larger.

Alternatively, for projects targeted 100% for veterans or homeless, four (4) points will be awarded if at least 20% of the units are 2-bedrooms or larger.

4.4.4 Tenant Services (8 maximum points)

While all projects seeking LIHTC and RHFP awards must, at a minimum, provide tenants with passive links to community services as outlined in the Threshold Criteria, DHCD recognizes the value that more direct service provision brings to tenants lives and will award additional points as follows.

Up to eight (8) points will be awarded to projects that augment the minimum Threshold Criteria by identifying one or more tenant service providers for services on-site or in the community. The provision of such services must be evidenced by a certification from the applicant detailing the services to be provided. A contract, memorandum of understanding, or other formal written agreement between the Developer, the property management company, and the service provider(s) may also be provided to evidence the tenant services. Failure to provide the tenant services as described in the certification will result in negative points on future applications as described in Section 4.1.2. Points will be awarded based on the described services, the applicability of the services to the tenant population, and the existence of a specific mechanism for resident feedback about tenant services at the project.

4.4.5 Mixed Income Housing (4 maximum points)

DHCD supports the development of mixed income housing for families, the elderly, and persons with disabilities. DHCD will award four (4) points to projects that include both affordable and Market Rate Units where the Market Rate Units represent at least 10% of the overall project units. The term Market Rate Unit refers to units without income or rent restrictions. To receive the points, the application must demonstrate that the owner and property manager have experience owning and managing mixed income communities. The lender and tax credit letters of intent included with the application must reference the mixed income nature of the project as described in the market study.

4.4.6 Preservation of Existing Affordable Housing (4 maximum points)

Up to four (4) points will be awarded to a project that involves the acquisition and rehabilitation of an existing multifamily rental housing development, whether or not it has existing rent or income restrictions, provided the project agrees to affordability restrictions for at least forty (40) years as follows:

- Family preservation projects located in a Community of Opportunity – 4 points
- All other preservation projects- 3 points

For purposes of receiving these points, rehabilitation means repair of or alterations to an existing building, or buildings, where a majority of the structural elements of the original building or buildings, at a minimum, is incorporated into the finished project. In its discretion, DHCD may permit a project to receive these points if the project involves the demolition and replacement of an existing occupied housing project if rehabilitation of the existing building or buildings is infeasible or impractical. The replacement project must comply with DHCD's policies concerning displacement and relocation of existing tenants.

4.5 Leverage and Cost Effectiveness (20 maximum points)

LIHTC and DHCD's programs are not adequate to address all of Maryland's rental housing needs. Projects that maximize support from other non-state resources, including local contributions, will receive additional consideration. Additionally, increasing development costs limit the number of projects and units produced, resulting in fewer Maryland residents who can be served by this important resource. To encourage development that balances meeting pressing housing needs, ensuring high quality construction that is attractive, efficient, and sustainable, and investing resources in responsible manner, DHCD will adjust scoring to favor cost effective transactions.

4.5.1 Direct Leveraging (10 maximum points)

DHCD will award points based on the percentage of total development costs funded by non-state resources in accordance with the chart below. For purposes of this section, State resources include:

- all equity generated from competitive LIHTC awards from the State's LIHTC ceiling except any LIHTC awarded as the result of a federally or state designated basis boost;
- HOME funds, DHCD-administered rental housing resources including, but not limited to RHFP, RHW, the Community Legacy Program, Demolition Funds, and the Partnership Rental Housing Program.

Leveraged funding may include:

- Equity from a federal or state basis boost;
- equity from non-competitive 4% LIHTC awards;
- the proceeds of MBP financing;
- local contributions (as described below);
- locally-controlled federal resources such as HOME, CDBG, or State Small Cities CDBG;
- other non-DHCD State funding;
- private financing; and
- Private or philanthropic funding.

Projected equity from federal Historic Tax Credits (HTC) is also considered leveraged funding. To qualify the applicant must provide evidence that the Part 1-Historic Preservation Certification Application has been submitted to the Maryland Historical Trust (MHT); documents that MHT has recommended approval of the Part 1 Application or documents that project building(s) is already listed in the National Register; and certifies that the applicant will complete the HTC application process and diligently pursue HTC equity investment.

Local Contributions

A. To receive points under this section for a local contribution, the following conditions must be met:

(1) Evidence of an anticipated political subdivision contribution shall be in the form of a letter from an authorized political subdivision official and shall indicate the type and amount of the contribution that the political subdivision anticipates making.

(2) A local contribution shall be a contribution which is not contingent upon completion of tasks or improvements that are not related to the project and which:

(a) Reduces development costs, such as:
   i. The donation or long-term leasing of land or improvements;
   ii. Capital funds for acquisition, construction, rehabilitation, or development costs;
   iii. Locally installed infrastructure or site improvements which reduce off-site costs attributable to the project; or
   iv. Waiver of local fees for permits, tap fees, impact fees, and other fees and charges;

(b) Reduces operating expenses, such as:
   i. Real estate tax abatement or a payment in lieu of taxes (PILOT);
   ii. Operating or rent subsidies for the project; or
   iii. Long-term agreements for a political subdivision to provide services at no cost to a project such as trash collection, road or grounds maintenance, or grounds care; or

(c) Otherwise supports a project such as:
   i. Allocation of rent subsidies;
   ii. Guarantees of deficits or completion of construction; or
   iii. Long-term provision of needed social services for special use projects.

(3) Local contributions may:
   (a) include terms which require repayment of the contribution if the project is sold or no longer provides low income housing; and
   (b) be in the form of loans with interest rates acceptable to DHCD.

All calculations for this section will be based on DHCD underwriting of a project which may include adjustments to LIHTC equity based on DHCD assumptions about credit pricing as announced prior to a round. Additionally, for projects with market rate (i.e. non-income restricted) units and mixed-use projects, DHCD will consider only leveraged funds applicable to the affordable units by prorating both sources and uses to remove non-residential and market rate components of the project. Residential costs will be prorated based on the project's Applicable Fraction (as defined in the Code) unless DHCD determines that market rate and affordable units are not comparable in which case DHCD, in its sole discretion, may require greater itemization of costs to allocate sources and uses to the affordable portion of the project.

Finally, because projects in rural areas have higher fixed transaction costs due to their relatively smaller size and have less access to locally controlled sources of leverage, DHCD will award leveraging points to rural transactions as defined in Section 4.2.3 on a higher scale than for non-rural transactions. Additionally, because family projects located in Communities of Opportunity are an important priority of DHCD, leveraging points will be awarded on a higher scale as well.

For purposes of this section, a rural area includes any area eligible under the U.S. Department of Agriculture's Rural Development programs or any area in Allegany, Caroline, Dorchester, Garrett, Kent, Somerset, Washington, Wicomico, or Worcester Counties that are not otherwise CDBG entitlement communities or HOME Participating Jurisdictions.

Points will be awarded as follows:

Points	Leveraged Funding: Family Projects Located in a Community of Opportunity	Leveraged Funding: Rural	Leveraged Funding: All Other Projects
10	40%+	45%+	50%+
9	35% to <40%	40% to <45%	45% to < 50%
8	30% to <35%	35% to <40%	40% to <45%
7	25% to <30%	30% to <35%	36% to <40%
6	20% to <25%	25% to <30%	33% to < 36%
5	15% to <20%	20% to <25%	30% to <33%
4	10% to <15%	15% to <20%	27% to <30%
3	5% to <10%	10% to <15%	24% to <27%
2	3% to <5%	5% to <10%	22% to <24%
1	2% to <3%	3% to <5%	20% to <22%
0	<2%	<3%	< 20%

4.5.2 Operating Subsidies (10 maximum points)

DHCD recognizes that projects may include other local investments not directly included in a project's sources and uses statement but which, nonetheless, represent significant reductions in the State resources needed to achieve feasibility. In particular, locally controlled project-based rental subsidies allow projects to serve lower income households and protect tenants against being rent burdened while sustaining a project's rental revenues. Additionally, local PILOT arrangements that reduce operating costs and other forms of operating assistance may be available.

To receive points for project-based rental assistance, the assistance must be structured to ensure that tenants in project-based units pay no more than 30% of their income towards rent and utilities. The value of project-based assistance will be calculated per the application based on estimates of the typical monthly tenant subsidy and the duration of the contract.

PILOTs and other local operating subsidies will be evaluated on the basis of the per unit impact of the subsidy and awarded points based on the table below. To receive points for a PILOT, the local taxing jurisdiction must provide a letter outlining the first year savings the PILOT represents compared to the projected standard tax assessment and stating the duration of the PILOT. DHCD will multiply that figure by the number of years the PILOT will remain in effect (PILOTs with a term in excess of fifteen (15) years will only be counted for the fifteen (15) year LIHTC compliance period) and divide by the number of affordable units in the project.

To receive points for other operating subsidies, the subsidy must directly fund project operations or be specifically designated to fund services for tenants of the project and have a term of no less than ten (10) years. The application must include documentation of the subsidy, including a written commitment and evidence satisfactory to DHCD that the source of funding is secure. This could include endowments or reserves capitalized from non-project sources, federal obligations subject to appropriations, contracts, or documented awards from other financially secure entities (e.g. a long term commitment from a foundation). Finally, the subsidy cannot be accompanied by repayment terms that diminish its value to the project or result in an effective loan. Agreements with recapture or repayment requirements resulting from noncompliance or nonperformance are acceptable. The provider of the operating subsidy must provide a letter or other documentation outlining its duration and its value to the project on an annual basis from year-one of operations. DHCD will multiply that figure by the duration of the subsidy (not to exceed fifteen (15) years) and divide by the number of affordable units in the project.

The total value, calculated as described herein, of project- based rental assistance, PILOTS or similar tax abatements, and operating subsidies will be totaled by DHCD and divided by ten (10) to determine the average subsidy per affordable unit per year over a ten (10) year period. Points will be awarded points based on the value per affordable unit per year of the subsidy as follows:

LONG-TERM (10 YEAR) ANNUAL OPERATING SUBSIDIES PER UNIT		
Points	Entitlement Jurisdiction	Non-Entitlement Jurisdiction
10	Subsidy ≥ $400	Subsidy ≥ $200
9	= $350 to $399	= $175 to $199
8	= $300 to $349	= $150 to $174
7	= $250 to $299	= $125 to $149
5	= $200 to $249	= $100 to $124
3	= $150 to $199	= $75 to $99
1	= $100 to $149	= $50 to $74
0	< $100	< $50

4.5.3 Construction or Rehabilitation Cost Incentives (Negative 8 points maximum)

To encourage cost-effective construction, DHCD will deduct up to a total of eight (8) points per project based on the extent to which the project's adjusted per square foot and per bedroom construction costs exceed the median construction costs of all projects submitted in a specific competitive funding round. Projects which request non-competitive funding, will not be subject to any point deduction in this section.

Points will only be deducted if a project's per square foot and/or per bedroom construction costs are above the safe harbor limits established by DHCD in advance of the competitive funding round. The safe harbor limits will be based on the median costs of all projects submitted in the prior competitive funding round, and will be published by DHCD at least ninety (90) days prior to the deadline for application for the competitive funding round.

Construction costs include all on-site and off-site development and the total construction contract less all site work costs (i.e. any costs included in Section 2 of CDA Form 212) and any construction contingencies. In recognition of the different types of construction and project types, the following adjustments will be made to a project's construction costs to arrive at the Adjusted Construction Cost used for scoring in this category:

Project Type	To Calculate Adjusted Construction Costs:

Small Projects (40 units or less)	Reduce construction costs by 5%
Cottage, Single Family, Semi-detached Dwellings, and Townhomes	Reduce construction costs by 10%
Non-elevator Stacked Units and Elevator Buildings with 4 stories or less	Reduce construction costs by 5%
Elevator Buildings of 5 or more stories	Reduce construction costs by 10%

To calculate the per bedroom cost, the construction cost is divided by the total number of bedrooms being built or renovated. To calculate the per square foot cost, the construction cost is divided by the gross square footage of all buildings being built or renovated. Buildings with parking structures or internal parking will be evaluated on a case-by-case basis. Requests for review and comment should be submitted 45 days before the Round. DHCD will respond within 15 days. Requests for review and applications should include area and square foot cost for parking related construction separate from occupiable building(s) on DHCD Form 212.

If a project exceeds the safe harbor limit on either a per square foot or per bedroom basis, points will be deducted based on a project's Adjusted Construction Costs (as defined below) and as outlined in the following table:

% Above Median of Project's Adjusted Construction Costs on a Per Square Foot Basis	**Point Deduction**		**% Above Median of Project's Adjusted Construction Costs on a Per Bedroom Basis**	**Point Deduction**
1% to 10%	Minus 1		1% to 10%	Minus 1
11% to 15%	Minus 2		11% to 15%	Minus 2
16% to 20%	Minus 3		16% to 20%	Minus 3
21% or greater	Minus 4		21% or greater	Minus 4

If a project includes multiple building types, the Adjusted Construction Cost will be weighted in accordance with the respective square footage of each building.

Example

A one hundred (100) unit rental housing project consists of twenty-five (25) one-bedroom units, fifty (50) two-bedroom units and twenty-five (25) three-bedroom units, for a total of 200 bedrooms. The project includes a total of 100,000 square feet of space. The project is a 5-story elevator building. The project's construction cost is $10,000,000. The median construction costs for all applications submitted in the current competitive funding round is $40,000 per bedroom, and $100 per square foot.

Step 1. Calculate the Project's Adjusted Construction Costs
$10,000,000 reduced by 10% = $9,000,000

Step 2. Calculate the Project's Adjusted Construction Costs per Bedroom
$9,000,000 divided by 200 bedrooms = $45,000 per Bedroom

Step 3. Calculate the Project's Adjusted Construction Costs per Square Foot
$9,000,000 divided by 100,000 square feet = $90 per Square Foot

Step 4. Use chart above to determine point deduction (if any)
Project's Adjusted Construction Costs per Bedroom ($45,000 per BR) is 12.5% above the $40,000 per BR median, resulting in a deduction of 2 points
Project's Adjusted Construction Costs per Square Foot ($90 psf) is below the $100 psf median, resulting in no point deduction.
Total Point Deduction – minus 2 points.

4.6 Development Quality Standards (31 maximum points)

Up to thirty-one (31) points may be awarded based on features related to a project's physical quality and its impact on the environment, including the surrounding neighborhood and the residents. These points are further broken down as follows:

4.6.1 Green Features (12 maximum points)

DHCD will award points based on the inclusion of various "green" features of a project with more points available to projects participating in recognized certification programs. A project can only receive points under one of the following criteria:

- Twelve (12) points will be awarded to projects that complete and receive certification using green building criteria from one of the organizations in the table below. The certifying entity's published scoring checklist must be submitted and be completed by the project architect or a qualified third party demonstrating a sufficient level of scoring to achieve green certification as defined within the guidelines at the time of application. The certificate must be provided at the completion of the project.

Rating Entity	*Rating System*	*Website*

Enterprise Green Communities	2015 Enterprise Green Communities Criteria, as updated	www.entertprisecommunity.com
U.S. Green Building Council (USGBC	LEED V4 (Leadership in Energy and Environmental Design) for building type, as updated	www.usgbc.org
National Association of Home Builders (NAHB)	ICC-700 National Green Building Standard	www.nahb.org
Southface	Earthcraft Multifamily V5, as updated	www.southface.org
International Living Future Institute	Net Zero	www.living-future/netzero
Green Building Initiative (GBI)	Green Globes	www.greenglobes.com
Passive House Institute US	PHUIS+ US	www.phius.org

- Ten (10) points will be awarded to projects that do not complete the actual certification process as noted above but instead continue to meet the minimum score as indicated in the application for the certification. The program's published scoring checklist must be submitted and be completed by the project architect or a qualified third party and provide a statement that the checklist will be supported through the process; alternatively
- One (1) point will be awarded, up to a maximum of eight (8) points, for each bulleted feature below that contributes to a sustainable healthy environment over the extended period of the project life:
  - On new construction, through the use of innovative planning, a detailed written statement from a civil engineer shows a 20% or greater reduction in impervious surface area over conventional design through the use of permeable paving, efficient narrower compact road design, reduction in local parking requirements to a level where the project needs will still be met, permeable spill over parking areas, angled parking, shared parking and driveways, narrower sidewalks, and greater permeable open space adjacent to impervious cover. Note that implementation of certain listed examples may face local jurisdiction obstacles and must be compliant with accessibility codes and standards. While MDE supports progressive designs which are highly suitable for specific projects, approval from local jurisdictions may require waivers or special processes.
  - Site Work Management - Utilize the 2007 or current version of the Maryland Stormwater Design Manuals to select Best Management Practices (BMP) for collection and treatment of stormwater captured on site through maximizing permeable surfaces. Identify and utilize low impact treatment methods such as

open channel design in conjunction with open section paving, rain gardens (bio-retention devices) urban BMP devices, disconnection of roof or non-roof runoff, collection and reuse of water for irrigation or other approved domestic use. Criteria points awarded for projects utilizing methods identified or recognized by the Maryland Water Management Administration as Stormwater Credits for Innovative Planning:

- Natural area conservation
- Disconnection of rooftop runoff
- Disconnection of non-rooftop runoff
- Sheet flow to buffers
- Open channel use
- Environmentally Sensitive Development

- Recycled Materials – The project uses at least two (2) of the following: recycled paving products, recycled concrete aggregate or binders; recycled framing lumber, trim or deck materials with recycled content; mulch obtained from chipping of trees removed during on site clearing operations; donations of material from demolition such as kitchen cabinets or appliances to nonprofit organizations or other significant use of recycled materials.
- Renewable and Biodegradable Materials – The project makes significant use of renewable and biodegradable materials such as lumber, plywood flooring/walls and coatings, derived from sustainable forestry and agricultural methods.
- Local Material Procurement – The project makes use of locally available construction materials thereby reducing associated transportation costs. Submit a plan consistent with the local construction material procurement sections of any of the recognized sustainable development programs described in the Green Certification category above.
- Reflective Roofing – Install light colored/high albedo roofing Energy Star rated. On flat roof surfaces application to be at least 75% reflective roofing. On pitched roofs, reflective shingle roofing will be considered if a suitable product showing dirt and stain resistance is selected.
- Reflective Paving – Install light colored/high albedo materials with a minimum solar reflective index of 0.6 (60%) or open grid paving on at least 75% of site paved areas.
- Healthy Flooring – Install non- vinyl, non-carpet hard surface floor coverings in all rooms. Architect to review the need for adding sound attenuation elements where hard surface flooring is selected.
- Innovative Lumber Conserving Practices – Use engineered lumber or manufactured framing methods that conserve materials and do not rely on the use of full dimensional lumber and also reduce site originated waste. Identify systems to be

used. Provide documentation that at least 25% (by cost) of the project wood products and materials are certified in accordance with the Forest Stewardship Council (FSC), American Tree Farm System (ATFS), Canadian Standards Association (CSA) and Sustainable Forestry Initiative (SFI). Innovative practices such as Optimal Value Engineering (OVE) or other system conserving materials or increasing energy performance over conventional framing practices also qualifies for receiving points.

- Recycled Water - The project utilizes site run-off water, roof run-off or recycled gray water for irrigation or other code permissible uses. Water is effectively and practically stored and distributed to reduce the need for treated domestic water. This should represent at a minimum of 20% collection of roof area.
- Solar Energy - The project will utilize solar energy for any of the following: water heating; heat and cooling systems; lighting; or electric generation.
- Geothermal Heat Pumps - The project will utilize geothermal heat pumps for common area or apartment HVAC.
- Provide exterior lighting that meets the International Dark-Sky Association (IDA) guidelines for lighting. Provide lighting that discourages light pollution or lighting that is excessive or inappropriate for outdoor lighting. Provide lighting that is directed toward the ground, is fully shielded and incorporates energy saving features such as timers, dimmers, and motion sensors in all outdoor lighting.

4.6.2 Energy and Water Conservation and Sustainability (6 possible points)

DHCD will award additional points to projects to encourage design features that provide comfort and energy efficiency over the extended period of the project life and that assist DHCD in measuring energy conservation and sustainability outcomes.

- Four (f) points will be awarded to rehabilitation projects if the project sponsor commits to incorporate into the scope of work all energy conservation measures (ECM) that result in an overall energy savings of 30% or greater over pre-retrofit levels as verified by a RESNET/BPI rater, or all of the ECMs having an SIR greater than 1.0 as determined by a comprehensive energy audit.
- Two (2) points will be awarded to a rehabilitation project that does not receive the four points above if the project sponsor commits to incorporate into the scope of work all ECMs that result in an overall energy savings of 20% or greater over pre-retrofit levels or, all of the ECMs having an SIR greater than 1.5 as determined by a comprehensive energy audit
- Two (2) points will be awarded for any project utilizing alternative energy (solar, geothermal, etc.) for any of the following: water heating; heat and cooling; lighting; or electric generation for common areas or tenant units.

- Two (2) points will be awarded for any project if "Water Sense" labeled products are installed or retrofitted in all units and common facilities.

4.6.3 Project Durability and Enhancements (13 possible points)

- DHCD will award points for features that add to the long-term durability and enhancement of the project for both its residents and the surrounding community. One (1) point will be awarded, up to a maximum of thirteen (13) points, for each of the following:
  - The building, parking areas, and other improvements are laid out for convenient access by the residents, including those with disabilities, to site and community amenities, including public transportation.
  - Building entrances are designed and located to provide security and weather protection for the targeted resident group and the project includes green space areas, play areas, courtyards or exterior seating areas that provide recreational and social opportunities for the targeted resident community.
  - The building architecture, structure and mass complement the existing neighborhood and the project includes exterior architectural features and design elements that add interest and/or functionality, create unity with nearby architectural style, and generally improve the appearance of the building(s).
  - Architectural accessories such as decorative door surrounds, larger window trim, corner eave, cornice and column details or other special features are provided and are of composite or other durable materials.
  - Paving is provided-throughout the project site (parking areas and drive aisles) that equals local requirements for standard duty residential roadway or provide specifications which indicate a stone base of eight (8) inches or greater with the combination thickness of the asphalt base and top coat being at least five (5) inches and concrete paving at handicapped parking spaces, dumpster pad with apron and for entire accessible route.
  - Individual units, common areas, and community spaces are well designed for comfortable living and tenant activities. The layouts are efficient, with practical traffic flow and provide adequate space for furniture placement. (550 - 600 net sf. area for predominantly one (1)-bedroom units and 20% more area for each additional bedroom unit, preferably with the primary bedroom not less than 10'x11' in clear size, and in multiple bedroom units the smallest bedroom shall be not less than 9'-0" in one direction with a minimum of ninety (90) net square feet in area). Note the dimensions are for clear area and do not include the closet space.
  - Building exterior is at least 75% masonry or other highly durable materials such as cement fiber siding, stucco, stone, etc.

- Storage space is reasonable with a minimum of a four (4) foot clothes closet per person in each bedroom, and at least three of the following: an entry coat closet, linen closet, utility closet, or additional storage for storing seasonal or bulky items. Closets intended for appliances (i.e. washer/dryer, HVAC) cannot be included as storage space.
- A half bath is provided on the living/dining/kitchen level in layouts with more than one (1) story and the bath is visitable. For single-story units, at least one bath is visitable.
- The interior doors are panel and hardware is of grade two (2) or better quality hardware, with lever handles.
- Ceiling fans are provided in all bedrooms and at least one living area.
- Project has a non-smoking policy applicable to all interior space, including units and common areas.
- The project meets visitability standards for at least 25% of its units and incorporates universal design features in its units and common areas.
- The project is not located in an area with nearby non-residential activities
- Floor coverings are quality long lasting products. Any carpet products must meet the Carpet and Rug Institute's Green Label or Green Label Plus certification for carpet, pad and carpet adhesives. Hard finish flooring must be products with a verifiable ten (10) year or longer warranty
- For family projects, the cabinetry is plywood box construction, plywood or solid wood doors and durable finishes and hardware.
- Bathroom floors are sheet goods with a ten (10) year minimum warranty or ceramic tile with sealed grout.
- Tub/shower surrounds are ceramic tile with cementitious backer board or backer board supported by the Tile Council of North America (TCNA) installation or is better than builder grade quality fiberglass surrounds.

4.7 State Bonus Points

The QAP and Guide outline and implement important State priorities, making difficult choices about how to deploy affordable housing resources and seeking to achieve a reasonable balance among disparate opportunities to serve the housing needs of Maryland's residents. DHCD both recognizes and anticipates that facts on the ground, however, can change more quickly than DHCD can respond through revisions to this QAP and Guide and there can be unintended consequences of any scoring system that could lead to undesirable outcomes. To provide dexterity and an opportunity to course-correct based on changes in the State's needs, DHCD may award State Bonus Points to ensure that the award of competitive resources is balanced and in the State's best interest. Bonus points may be awarded to projects to ensure that the overall award of competitive LIHTC and RHFP:

- Represents a balance between the priorities outlined in this Guide, ensuring that unanticipated aspects of scoring do not systemically and practically prevent a given project type from receiving appropriate LIHTC and RHFP resources;

- Represents an equitable regional or geographic distribution of resources, ensuring that unintended consequences of scoring do not systemically and practically prevent a given region from receiving appropriate LIHTC and RHFP resources;

- Takes advantage of time sensitive opportunities to leverage substantial resources from the federal government or from other non-DHCD funding sources that may become available;

- Responds to urgent and recent changes in housing needs resulting from natural disasters, economic crises, market dislocations, acts of war or terrorism, environmental contamination, or other events;

- Responds to substantial economic development opportunities that have the opportunity to create new jobs in the State, such as investing in workforce housing that supports a major new employer creating new Maryland jobs;

- Responds to dislocations in the equity or debt markets related to LIHTC and the permanent financing sources used to provide mortgage debt to such projects;

- Promotes the development of projects that promote intergenerational housing opportunities or housing for the homeless;

- Responds to other critical policy directives, goals, or priorities identified and articulated by DHCD; or

- Affirmatively furthers fair housing or contributes to a concerted fair housing strategy.

DHCD may award State Bonus Points as follows:

- Only applications submitted in the round that were scored are eligible to receive State Bonus Points. Additionally, to receive State Bonus Points, a proposal must have scored at least one hundred and twenty (120) points prior to the award of State Bonus Points.
- No more than ten (10) State Bonus Points may be awarded to any project.
- No more than 20% of the State's competitive LIHTCs and RHFP funds may be awarded to projects receiving State Bonus Points.

- DHCD shall provide a written explanation of the factors leading to the award of State Bonus Points and this explanation will be published along with results of the funding round.

State Bonus Points are optional; they need not be fully awarded in any given funding round. DHCD may choose not to award any State Bonus Points within a round, choose to award fewer than the maximum State Bonus Points available, or choose to award all available State Bonus Points.

5 Waivers

5.1 Waivers – General

In general and unless specified elsewhere in this section, the Director of Multifamily Housing may grant waivers of the criteria and procedures in this Guide based on the factors for considering waivers. In addition, the Code of Maryland Regulations (COMAR) allows the Secretary of DHCD to waive or vary particular program regulations to the extent that the waiver is consistent with the governing statute if, in the determination of the Secretary, the application of a regulation would be inequitable or contrary to the purposes of the governing statute. The standards for each program vary slightly, so applicants should consult COMAR 05.05.01 for the Rental Housing Financing Programs; 05.12.01 for the HOME Program; and 05.05.02 for the Multifamily Bond Program and RHW.

DHCD requires applicants seeking a waiver of the Threshold or Competitive Scoring Criteria in this Guide to submit such requests in writing to the Director, Multifamily Housing Development Programs, at least thirty (30) calendar days in advance of the Round deadline. DHCD will provide a decision within fifteen (15) calendar days of receipt of the waiver request. This provision for waivers applies only to State-funded programs and State-imposed Threshold and Competitive Scoring Criteria. Federal regulations affecting LIHTC, HOME, and MBP may not be waived by the State, and applicants should consult their attorney or tax advisor on the possibility of waivers of federal requirements.

5.2 Waivers of Threshold or Competitive Criteria

5.2.1 Previous Project Performance (see Section 3.1.1)

For defaults involving loans, waivers of the restriction on participation in funding rounds may be granted for Primary Development Team members that were not involved in the defaulted loan for at least one (1) year prior to the default. In the case of other defaulted loans, waivers may be granted based on the circumstances surrounding the particular default. A waiver under this section must be approved by the Secretary. Among the factors considered in granting a waiver are:

- Reasons for the default;
- The applicant's role in the defaulted property and responsibility for guaranties or operations of the defaulted property; and
- Performance of other properties in the applicant's portfolio.

5.2.2 Previous Participation (see Section 3.1.1)

DHCD may grant waivers for Primary Development Team members unable to meet DHCD processing requirements based on the circumstances surrounding the particular delays or failures, including the reasons for the delays, the applicant's role in the processing delays, and the performance of the applicant in meeting processing timeframes for other projects. A waiver under this section must be approved by the Secretary.

5.2.3 Rehabilitation Costs (see Section 3.13.4)

Requests for waivers of the $15,000 per unit cost minimum for rehabilitation projects may be submitted to DHCD for projects that can demonstrate:

Comment [MS2]: Deleted need for waivers per the proposed changes to Section 4.5.3 for Construction Cost Containment

- A strong need for preservation of affordable housing in the market area;
- Affordable housing units will be lost if the project is not financed using DHCD resources; and
- Adequate reserves based on a capital needs assessment performed by an engineer or other qualified professional will be available to the project.

5.2.4 Acquisition of Schools or School Sites (see Section 3.9.8.1)

Waivers of this policy may be granted only if the following conditions exist:

- All other potential sources of funds have been sought and are clearly unavailable, and it is not feasible to undertake the project without benefit of DHCD funds for acquisition; and
- The project has particularly high public purpose such as serving an unusually high percentage of disabled or special needs persons, serving an unusually high percentage of very low income persons, or location in a market area not otherwise served by DHCD programs.

5.2.5 Builder's Fees (see Section 3.9.8.3)

Waivers may be requested for small projects and/or projects with specialized services or consultants with proposed builder's fees in excess of the defined cap. Applicants must include a detailed explanation of the reasons for the increased builder's fee with the request for a waiver. DHCD will evaluate waiver requests for reasonableness on a case-by-case basis to determine compliance with the threshold requirements. Increasing the fee to increase the LIHTC eligible basis is not a valid justification for a waiver.

5.2.6 Architects Fees (see Section 3.9.8.3)

Waivers may be requested for small projects and/or projects with specialized services or consultants with proposed architect fees in excess of the defined cap. Applicants must include a detailed explanation of the reasons for the increased architect's fee with the request for a waiver. DHCD will evaluate waiver requests for reasonableness on a case-by-case basis to determine compliance with the threshold requirements. Increasing the fee to increase the LIHTC eligible basis is not a valid justification for a waiver.

5.2.7 Civil Engineer Fees (see Section 3.9.8.3)

Waivers may be requested for small projects and/or projects with specialized services or consultants with proposed civil engineer fee in excess of the defined cap. Applicants must include a detailed explanation of the reasons for the increased civil engineer's fee with the request for a waiver. DHCD will evaluate waiver requests for reasonableness on a case-by-case basis to determine compliance with the threshold requirements. Increasing the fee to increase the LIHTC eligible basis is not a valid justification for a waiver.

5.2.8 Developer's Fees (see Section 3.9.8.3)

Applicants with proposed developer fees in excess of the $2.5 million limit must include a detailed explanation of the reasons for the increased developer's fee with the request for a waiver. DHCD will evaluate waiver requests for reasonableness on a case-by-case basis to determine compliance with the threshold requirements, which may include factors such as large, complex projects involving relocation or substantial rehabilitation.

5.2.9 Project Phasing (see Section 3.9.9)

A request for a waiver of this restriction may be submitted provided that such requests include a Market Study meeting the criteria of this Guide and demonstrating that the subsequent phase(s) will not adversely affect the leasing and operations of the initial phase.

5.2.10 Underwriting Standards (see Section 3.9)

Applicants seeking waivers of other underwriting standards in Section 4.8 must provide a detailed written request including, if necessary, independent studies or analyses by qualified professionals (market analyses, capital needs assessments, etc.) that support their request. DHCD will evaluate waiver requests for reasonableness on a case-by-case basis to determine compliance with the evaluation requirements.

5.2.11 Deductions for Team Experience (see Section 4.1.2)

Applicants seeking waivers of the provisions for negative points in Section 4.1.2 must provide a detailed written request consistent with the standards outlined in Section 5.2.1 above.

5.2.12 Definition of Elderly Housing (see Section 3.2.2)

Applicants seeking waivers of this definition must include: (a) a discussion demonstrating the public purpose of the waiver request and why the project is most feasible with the targeted elderly population; and (b) a Market Study meeting the criteria of this Guide.

6 Loan Processing Procedures

6.1 Processing LIHTC, RHFP, and RHW Reservations of Funding

If projects include RHFP or RHW loan financing, the following processes and requirements apply (see Appendix A flowchart). If projects also include LIHTC, additional procedures, described in the QAP, apply as well.

6.1.1 Loan Reservations

Following approval of recommended reservations, sponsors will receive RHFP funding reservation letters. These reservation letters include preliminary terms and conditions for the commitment of loan funds. They also specify requirements that must be met for projects to be approved for a commitment letter to be issued, including processing documentation and timeframes. The reservation is not a commitment to make a loan and DHCD is not obligated to make a loan until all conditions in the commitment letter are satisfied. DHCD reserves the right in making a reservation to substitute sources of funds, if, in DHCD's sole determination, this substitution provides for a more efficient use of DHCD's resources.

A reservation may be canceled and an application withdrawn from processing if any of the following occur:

- The loan processing and submission kit requirements as described in this section are not met. This includes a failure to meet the timeframes established in each kit.
- The project changes substantially from the initial submission. A substantial change includes: (1) a change resulting in a score reduction of the lesser of 3% or an amount sufficient to lower the score below the cut-off score for the round in which the project was approved; (2) a significant change in the project's design, financing, or amenities; (3) a material reduction in the project's income targeting or unit count; (4) a change of the project's sponsor or other member of the development team without the prior written approval of the Director, of Multifamily Housing; or (5) a change of the project's site.
- The project is changed so that it no longer meets all Threshold Criteria.
- The project's Developer, sponsor, owner, or its general partner(s) or managing member(s) files for bankruptcy or is the subject of an involuntary bankruptcy.
- The project is, for any reason, no longer feasible.
- The project's Developer, sponsor, or owner submits false, misleading, or incomplete information to DHCD.

6.1.2 Post Reservation Scheduling

DHCD must approve any significant deviations from the project schedule set forth in the application. In these cases, sponsors must submit updated schedules, including an explanation for the change, to DHCD for review. Sponsors must promptly notify DHCD if for any reason projects that receive reservations become infeasible.

DHCD monitors the progress of projects to ensure timely completion. LIHTC, RHFP and RHW Reservations and LIHTC Carryover Allocations will be canceled if a project falls too far behind its schedule, in DHCD's determination, or if it is determined that DHCD resources are in jeopardy of being lost to the State due to nonperformance by the sponsor. Failure to meet DHCD processing schedules may also affect future scoring (see also Section 4.1 – Capacity of Development Team).

For projects requesting RHFP and RHW, the applicant's processing schedule must be consistent with DHCD's loan submission kit process. For projects requesting allocations of current year LIHTC, sponsors must demonstrate that projects will meet the requirements for allocation of current year LIHTC. Please refer to the QAP for more information on processing LIHTC reservations and allocations.

6.1.3 Kick-off Meeting

Following its issuance of reservation letters, DHCD schedules "kick-off" meetings with sponsors. The multifamily lending team assigned to each project, which includes underwriting, construction, LIHTC, and finance staff, will be present at the meetings. Sponsors should require representatives of their contractor, architect, and management agent to attend. If any project financing requires mortgage insurance, a representative of the insurer also should be present at this meeting. Other DHCD staff members that may need to attend the kick-off meeting include the Director or Deputy Director of Multifamily Housing, DHCD's Equal Opportunity Officer, DHCD's attorney, and compliance and asset management staff.

The purpose of these meetings is to review reservation letters to gain a common understanding of their requirements, terms, and provisions for further processing of applications. At the kick-off meetings, assigned team members review the requirements and timeframes of the loan processing schedule and submission kit processing in detail. At this time, the assigned team members may elect to schedule subsequent meetings with sponsors to conduct detailed site visits.

6.1.4 Underwriting and Construction Review

After reservation letters are issued, loan applications are underwritten and detailed construction plans and documents reviewed before issuance of commitment letters. The review process is generally divided into two phases, viability and commitment reviews. In its discretion, DHCD may permit the submission of a combined viability and commitment package (fast track). Specific milestone dates for completing these reviews and issuing commitment letters are discussed at kick-off meetings and set in conformance with DHCD's submission kit loan process.

Detailed guidance is provided to sponsors throughout this process to assist the Development Team in the preparation of construction plans and underwriting documentation. The architectural requirements for each stage of this review are those defined in the American Institute of Architect's (AIA) publication The Architect's Handbook of Professional Practice.

Additionally, other underwriting requirements will be detailed and made clear to all parties early in the process. Projects in the advanced stages of pre-development will be able to proceed at much quicker paces. In any event, DHCD and sponsors should make every attempt to complete all review requirements within the timeframes outlined in reservation letters and during kick-off meetings.

6.1.5 Viability Review

During this phase of the review process, sponsors submit updated application forms along with more detailed construction and underwriting documentation, all as specified in the viability submission kit supplied at kick-off meetings. DHCD staff reviews the material and issues viability reports to sponsors. Viability reports include DHCD's underwriting pro-forma and a term sheet showing any changes in anticipated loan terms and conditions based on findings during the viability review.

6.1.6 Commitment Review

At this stage of review, sponsors submit final application forms and complete construction and underwriting documentation. After DHCD staff has reviewed the materials, a commitment report, including a final underwriting pro-forma and updated term sheet, are prepared. The commitment report is sent to sponsors and the term sheet to DHCD's attorney. Based on the findings in the commitment report, a draft commitment letter is prepared and sent to the sponsor. DHCD's goal is to complete any adjustments to the draft commitment letter within fifteen (15) calendar days of issuing the commitment report and to issue the commitment letter not later than seventy (70) calendar days after the sponsor submits the commitment review package. Once all adjustments are made, DHCD's attorney finalizes the commitment letter and begins preparing loan documents.

6.1.7 Initial Closing; First Draw Requisition

Along with the commitment letter, sponsors receive a loan closing checklist. Initial closing will occur once all closing conditions set forth in the commitment letter and closing checklist have been satisfied.

DHCD's standard loan conditions are detailed in the commitment letter. Sponsors should also review and understand DHCD's draw and requisition requirements, particularly those affecting the initial draw. Staff is available to meet and review the draw procedures. Copies of the draw procedures also are available on DHCD's website at:

http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx

Initial draw requests must be submitted to DHCD at least fifteen (15) business days prior to initial closing. Accepting DHCD's form closing documents without modification expedites the closing process.

6.1.8 Construction or Rehabilitation Period

Construction or rehabilitation of projects normally commences once initial closing is complete. Prior to the start of construction or rehabilitation, sponsors and their general contractor must participate in a pre-construction conference with the Multifamily Housing construction staff and Finance Manager responsible for the project. The purpose of the meeting is to fully review all construction period procedures such as inspections by DHCD staff, draw requisition and disbursement procedures, and change order procedures and requirements. All other project lenders should be present at this meeting to ensure a smooth inspection and draw process.

At a sponsor's request, DHCD may permit work on projects to begin prior to closing of DHCD's financing. An "Early Start" of the construction or rehabilitation may be authorized only after issuance of the commitment letter. Approval for an Early Start is evidenced by a written approval issued by DHCD. Work may begin when the conditions of the Early Start letter are met and the pre-construction conference has been held. DHCD will not fund any costs incurred for work performed under an Early Start unless the loan is eventually closed.

6.1.9 Developer Fee Disbursement

For transactions involving RHFP and RHW, DHCD may allow up to 25% of the projected non-deferred portion of the budgeted developer's fee to be disbursed at initial closing or through substantial completion, as evidenced by the issuance of an acceptable certification of substantial completion by the project architect. At substantial completion, DHCD may allow an additional 25% of the projected non-deferred portion of the budgeted developer's fee to be disbursed. The remaining non-deferred developer's fee is disbursed only after the project is 100% complete, a cost certification is accepted by DHCD, and DHCD's final closing requirements have been completed.

Developer's fees may be paid only from equity, cash flow, or other non-DHCD sources of funds, if DHCD loans are not in default, and the Developer continues to perform satisfactorily.

Deferred developer fees are disbursed only after all must-pay debt and cash flow payments are made from net operating income.

6.1.10 Final Closing

After the completion of construction or rehabilitation, sponsors must complete a cost certification prepared by an independent certified public accountant. The cost certifications will be reviewed within ninety (90) calendar days of receipt provided all construction close-out documents and change order requests have been submitted before or at the same time that the cost certification is received. A final determination of mortgage proceeds letter will be prepared and sent to the sponsor for signature.

6.2 Processing Multifamily Bond Program Applications

For projects that request MBP financing, the following requirements apply:

Processing Multifamily Bond Program Applications

Applicants requesting MBP financing and non-competitive LIHTC (not allocated from the State's LIHTC ceiling) should apply using the Application Submission Package available on the DHCD website. All requests for MBP financing are subject to DHCD underwriting and construction reviews.

For taxable/tax exempt MBP Financing, all bonds must be outstanding for at least twenty-four (24) months.

Requirements

Applications for the MBP are subject to an initial review against the Threshold Criteria, as described in Chapter 3 of this Guide, and must score at least 92 points on the Competitive Scoring Criteria as described in Chapter 4 of this Guide. Processing is subject to certain fees that are subject to change. The current fees are described in Appendix C of this Guide. Updates to fees will be provided on DHCD's website.

Projects financed with Multifamily Bonds are eligible for non-competitive LIHTC. DHCD issues letters pursuant to §42(m) of the Code reserving LIHTC to qualified projects prior to initial loan closing. Applicants may elect to lock in the Tax Credit applicable percentage for the month the bonds are issued by completing the DHCD certification form any time during the month the bonds are issued through the fifth day of the following month; otherwise, the LIHTC applicable percentage defaults to the month the building is placed in service (see the Code §42(b) (2) (A) (ii)). Projects receiving either mortgage insurance or subsidies from HUD may also be subject to subsidy layering review under §911 of the Federal Housing and Community Development Act of 1992.

Projects financed with MBP must meet federal income targeting requirements. Minimum income elections for the MBP are identical to the requirements of the LIHTC program: 20% of all units must be rented to households with incomes of 50% or less of area median; or 40% of all units must be rented to households with incomes of 60% or less of area median.

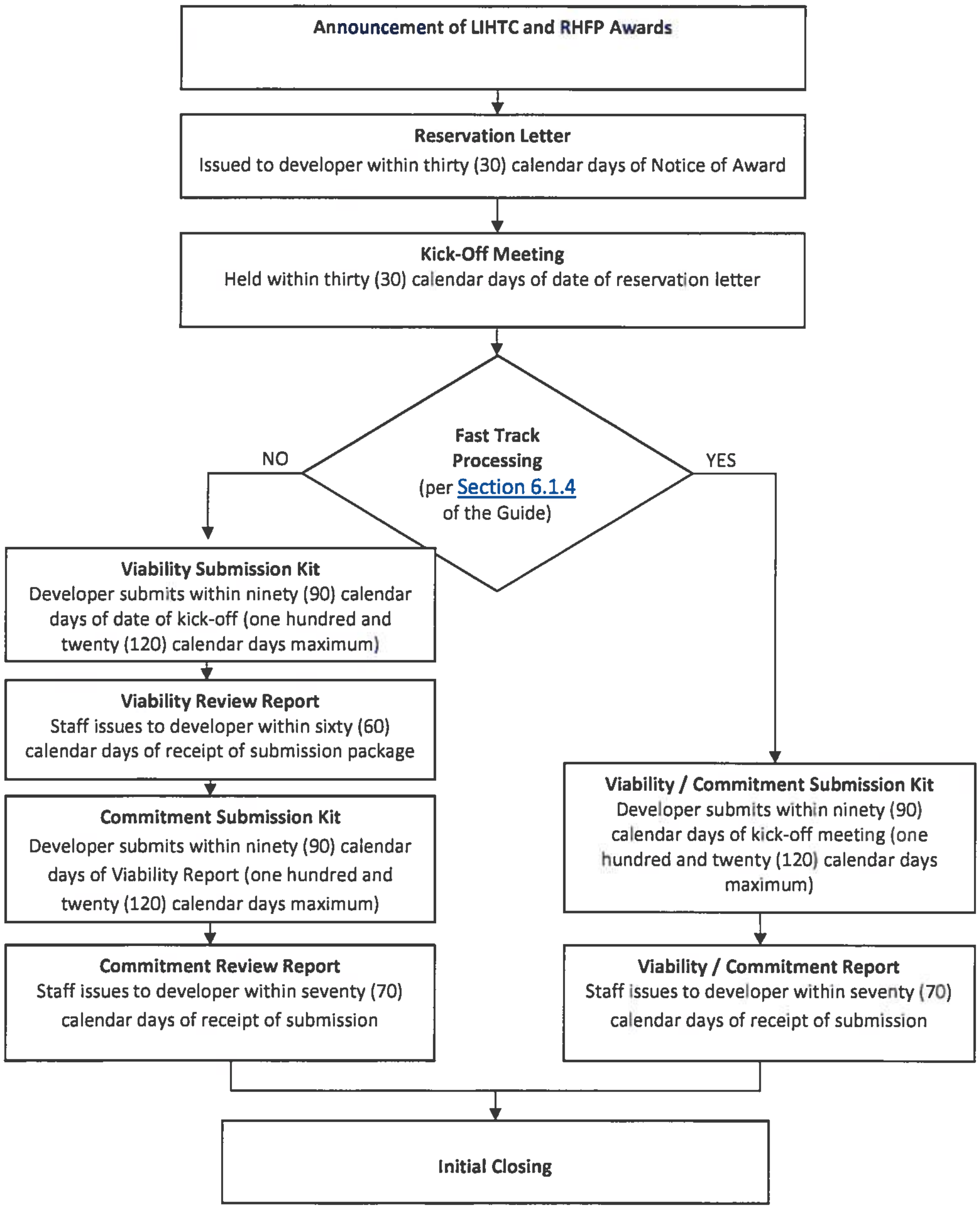
DHCD reserves the right to impose additional State income targeting requirements for MBP financed projects. DHCD continues to modify the MBP to meet customer needs with updates posted to DHCD's website on a regular basis.

Expedited Processing

Eligible projects requesting MBP financing may be processed under an expedited system. To be eligible, applications must request tax exempt financing without other DHCD financing or assistance, meet all Threshold Criteria or receive a waiver in accordance with Section 5.1 of this Guide, score at least ninety-two (92) total points and meet the additional scoring criteria outlined for FHA Risk Sharing Insurance noted in the call out box at the beginning of Chapter 4. If these requirements are met and subject to conditional HFRC recommendation, projects can expect to receive inducement approvals within ninety (90) calendar days of application submission.

To ensure timely processing, construction and underwriting reviews are limited to an analysis of a project's overall conformity to construction and underwriting standards established by DHCD and conformity to Federal requirements. The primary underwriting responsibilities are delegated to the credit enhancers and their appropriate Delegated Underwriters and Servicers (DUS Lenders).

Appendix A: Underwriting and Closing Process



Appendix B: Application and Processing Fees

Fee Type	LIHTC	Rental Housing Financing Programs and Rental Housing Works*	When Due
Application Fee	$2,500 per application regardless of the number of funding resources requested.		Submission of application for funding.
Reservation Fee	$5,000 per reservation.	N/A	Remit to CDAs Trustee as invoiced.
LIHTC Allocation Fee	5% of the annual LIHTC amount allocated.	N/A	Varies depending on financing and sponsor type; see QAP for details.
Commitment Fee	N/A	1.5% of the loan amount.	Earlier of initial loan closing or bond closing; may be financed.
10% Expenditure Test Deadline Extension Fee	$1,000 for each month the deadline is extended.	N/A	Submission of application for extension.
IRS Form 8609 Amendment Fee	$4,000 per project; waived if amendment results from an administrative error by CDA.	N/A	Submission of a request for an amended IRS Form 8609.
Closing Attorney's Fees	N/A	$25,000 for the first loan $5,000 for each additional loan	Initial loan closing.
LIHTC Compliance Monitoring Fee	$30 per unit per year.	N/A	Annually as invoiced.
IRS Form 8823 Compliance Review Fee	$25 per unit per occurrence.	N/A	Submission of a request for issuance of an 8823 by CDA to correct a previously uncorrected 8823.
Assumption Closing Fee	N/A	$5,000	With request.
Subsidy Layering	$1,000		Initial Closing

*The RHFP and RHW application and processing fees apply to any funds awarded under this Guide. For fees applicable to DHCD's other programs, including the Partnership Rental Housing Financing Programs, the Shelter and Transitional Housing Facilities Grant Program, and energy lending programs, please see DHCD's website at www.dhcd.maryland.gov

Appendix C: Bond Application and Processing Fees

<table>
<tr><th>Fee Type</th><th>LIHTC</th><th>Multifamily Bond Program (Traditional)*</th><th>Multifamily Bond Program (Refinance)</th><th>When Due</th></tr>
<tr><td>Application Fee</td><td colspan="2">$2,500 per application.</td><td>Fees range from $1,000 to $5,000 or 0.015% of the loan option selected; consult program staff for more information.</td><td>Submission of application for funding.</td></tr>
<tr><td rowspan="2">LIHTC Allocation Fee</td><td colspan="2" rowspan="2">5% of estimated annual tax credit amount allocated.</td><td rowspan="2">None if no new allocation of LIHTC requested.</td><td>Issuance of §42(m) letter.</td></tr>
<tr><td>Issuance of IRS Form(s) 8609 for any additional fee for actual tax credit allocated over initial estimate.</td></tr>
<tr><td>Commitment or Origination Fee</td><td>N/A</td><td>1.5% of the first $10 million of loan principal plus 1% of loan principal over $10 million. Fee increased to 3% for Tax/Tax Exempt financings</td><td>Generally 1.5% of outstanding loan principal.</td><td>Earlier of initial loan closing or bond closing; may be financed for new loan.</td></tr>
<tr><td>Assumption Fee</td><td>N/A</td><td>None.</td><td>1.5% of the loan principal assumed.</td><td>Loan closing.</td></tr>
<tr><td>Costs of Issuance</td><td>N/A</td><td>Actual costs of issuance.</td><td>$100,000 plus 1% of the new loan principal.</td><td>Initial closing for new loans and closing for refinance.</td></tr>
</table>

Fee Type	LIHTC	Multifamily Bond Program (Traditional)*	Multifamily Bond Program (Refinance)	When Due
Negative Arbitrage[1]	N/A	Amount determined for each loan after each draw.		After each draw as invoiced.
Non Usage Fee	N/A	2% of estimated loan principal as a deposit against costs of issuance.	None.	Before POS issued and bonds priced (generally sixty (60) to ninety (90) calendar days prior to scheduled initial closing); amount credited to costs of issuance at initial closing.
Closing Attorney's Fees	N/A	$25,000 for the first loan. $5,000 for each additional loan.	$5,000	Initial loan closing.
MBP CLC/PLC Extensions Fee[2]	N/A	Actual costs incurred in connection with extensions of maturity and/or delivery dates of GNMA securities.		As invoiced.
LIHTC Allocation Amendment Fee	$4,000 per project; waived if amendment results from an administrative error by CDA.	N/A		Submission of a request for an amended IRS Form 8609.

*For fees applicable to the taxable/tax-exempt financing product, see the DHCD website at: http://dhcd.maryland.gov/HousingDevelopment/Documents/mbp/Taxable_GNMA_Loans.pdf

[1] Negative arbitrage is the difference between the bond yield and the investment yield on undrawn proceeds. A letter-of-credit may be required to be posted prior to closing for an amount sufficient to cover the maximum amount of negative arbitrage on the loan. Consult program staff for more information.

[2] These costs may include administrative charges, reasonable costs or expenses incurred by CDA, and reasonable reimbursement or fees of all professionals working on the transaction in connection with any requested extension, including costs, fees, reasonable hourly reimbursement, and expenses of bond counsel, other in-house or outside counsel, any rating agency, and any financial advisor to CDA.

Fee Type	LIHTC	Multifamily Bond Program (Traditional)*	Multifamily Bond Program (Refinance)	When Due
LIHTC Compliance Monitoring Fee	$30 per unit per year.	N/A		Annually as invoiced.
MBP Loan Pre-payment[3]	N/A	$5,000 initial review $5,000 Payoff		Receipt at payoff review at the time of repayment.
IRS Form 8823 Compliance Re- Review Fee	$25 per unit per occurrence.	N/A		Submission of a request for issuance of an 8823 by CDA to correct a previously uncorrected 8823.
Equity Redefinition Fee	N/A	1.50% of outstanding loan principal.		Upon agreement of redefinition.
Servicing Fee	N/A	0.25% added to bond loan interest rate		Each payment of debt service
IRS Form 8609 Amendment Fee	$4,000 per project; waived if amendment results from an administrative error by CDA.	N/A		Submission of a request for an amended IRS Form 8609.

[3] These are costs incurred in connection with redeeming bonds as permitted by the deed of trust note and may include negative arbitrage for forty-five (45) calendar days; unamortized costs of issuance and premiums, if any; bond counsel fees; and administrative charges. Consult DHCD Finance staff for more information.

Appendix D: Qualified Census Tracts Standards

http://www.huduser.org/portal/datasets/qct.html

Appendix E: Rental Housing Financing Programs Surplus Cash Split Examples

Rental Housing Financing Programs (Including RHW) Surplus Cash Split Examples (0% Interest Rate Option with "Contingent Interest")

	State Soft Debt*	Local Soft Debt	DHCD %	Local Gov. %	Developer %	Comments	% Splits w/ Deferred Dev Fees	
Ex. 1	$2,000,000 100.00% of Total	$0 0.00% of Total	75.00%	0.00%	25.00%	DHCD will only take 50% of Surplus Cash until all Developer Deferred Fees are Paid.	DHCD LG Dev Total	50.00% 0.00% 50.00% 100.00%
Ex. 2	$2,000,000 89.89% of Total	$225,000 10.11% of Total	75.00%	0.00%	25.00%	DHCD will only take 50% of Surplus Cash until all Developer Deferred Fees are Paid. The Local Government cannot negotiate a higher share of the Surplus Cash with DHCD and/or Developer.	DHCD LG Dev Total	50.00% 0.00% 50.00% 100.00%
Ex. 3	$2,000,000 80.00% of Total	$500,000 20.00% of Total	60.00%	15.00%	25.00%	DHCD will only take 50% of Surplus Cash until all Developer Deferred Fees are Paid. DHCD will only take 50% of Surplus Cash until all Developer Deferred Fees are Paid. The Local Government is receiving a Prorated Share of the non-Developer portion (75.00%) of the Surplus Cash.	DHCD LG Dev Total	50.00% 15.00% 35.00% 100.00%
Ex. 4	$2,000,000 72.73% of Total	$750,000 27.27% of Total	54.55%	20.45%	25.00%	DHCD will only take 50% of Surplus Cash until all Developer Deferred Fees are Paid. The Local Government is receiving a Prorated Share of the non-Developer portion (75.00%) of the Surplus Cash.	DHCD LG Dev Total	50.00% 20.45% 29.55% 100.00%
Ex. 5	$2,000,000 66.67% of Total	$1,000,000 33.33% of Total	50.00%	25.00%	25.00%	The Local Government is receiving a Prorated Share of the non-Developer portion (75.00%) of the Surplus Cash.	DHCD LG Dev Total	50.00% 25.00% 25.00% 100.00%
Ex. 6	$2,000,000 57.14% of Total	$1,500,000 42.86% of Total	50.00%	25.00%	25.00%	The Local Government Share of the Surplus Cash is being capped at 25.00% (or 33.33% of the 75.00% non-Developer portion). The Local Government cannot negotiate a higher share of the Surplus Cash with DHCD and/or Developer.	DHCD LG Dev Total	50.00% 25.00% 25.00% 100.00%
Ex. 7	$2,000,000 50.00% of Total	$2,000,000 50.00% of Total	50.00%	25.00%	25.00%	The Local Government Share of the Surplus Cash is being capped at 25.00% (or 33.33% of the 75.00% non-Developer portion). The Local Government cannot negotiate a higher share of the Surplus Cash with DHCD and/or Developer.	DHCD LG Dev Total	50.00% 25.00% 25.00% 100.00%
Ex. 8	$2,000,000 39.60% of Total	$3,050,000 60.40% of Total	37.50%	37.50%	25.00%	The Local Government Share of the Surplus Cash is being capped at 37.50% (or 50.00% of the 75.00% non-Developer portion). The Local Government cannot negotiate a higher share of the Surplus Cash with DHCD and/or Developer.	DHCD LG Dev Total	37.50% 37.50% 25.00% 100.00%

ATTACHMENT B

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

National Housing Trust Fund

Interim Rule Summary

24 CFR parts 91 and 93

Office of Affordable Housing Programs

6/19/2015

This document is a summary of the program requirements for the National Housing Trust Fund (HTF) and is provided as a resource. It does not contain a complete list of all the requirements applicable to the HTF. A full copy of the HTF Interim Rule can be accessed on the HTF website at, https://www.hudexchange.info/htf.

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EXECUTIVE SUMMARY

Purpose:
The National Housing Trust Fund (HTF) is a new affordable housing production program that will complement existing Federal, State, and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable housing for extremely low-income (ELI) and very low-income households (VLI), including homeless families.

Statutory Background:
The HTF was established under Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289). Section 1131 of HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Act) to add a new section 1337, entitled "Affordable Housing Allocation" and a new section 1338, entitled "Housing Trust Fund."

Publication of Program Rules:
HUD published the proposed HTF formula Rule (FR-5246-P-01) on December 4, 2009 and the proposed program Rule (FR-5246-P-02) on October 29, 2010. On January 30, 2015, HUD published an interim program Rule (FR-5246-I-03). The interim rule provides the guidelines for States to implement the HTF.

Grantees:
HTF is a formula grant program, which is to be administered by States. This includes the 50 States, Washington DC, the Commonwealth of Puerto Rico, and each of the insular areas. A State may choose to administer its own program or choose a qualified State-designated entity to administer the HTF funds on its behalf. A list of HTF grantees can be found on the HTF website.

Program Requirements:
The HTF funds will be distributed by formula. Grantees are required to use at least 80 percent of each annual grant for rental housing; up to 10 percent for homeownership housing; and up to 10 percent for the grantee's reasonable administrative and planning costs. HTF funds may be used for the production or preservation of affordable housing through the acquisition, new construction, reconstruction, and/or rehabilitation of non-luxury housing with suitable amenities. All HTF-assisted rental housing must meet a minimum affordability period of 30 years. All HTF-assisted homeownership housing must meet the minimum affordability period of 10, 20 or 30 years based on the amount of HTF investment in the unit.

Eligible activities and expenses include:

- Real property acquisition;
- Site improvements and development hard costs;
- Related soft costs;
- Demolition;
- Financing costs;
- Relocation assistance;
- Operating cost assistance for rental housing (≤ 30 percent of grant); and
- Reasonable administrative and planning costs.

More Information:
HUD is developing guidance and training to assist grantees and program partners in designing and implementing their programs. For more information on HTF, visit https://www.hudexchange.info/htf.

24 CFR PART 93 SUBPART A- GENERAL

Overview- § 93.1

Each year, HUD will allocate the amount made available for the HTF based on the formula established in the interim rule. The amount available for allocation is the amount set aside by Fannie Mae and Freddie Mac for the HTF during their fiscal year (January 1- December 31). Deposits to the HTF are due within 60 days of the end of their fiscal year. HUD will publish a notice in the Federal Register announcing HTF allocations for the 50 States, the District of Columbia (DC), the Commonwealth of Puerto Rico (Puerto Rico), and each of the insular areas.

SUBPART B- FORMULA ALLOCATION

Formula Allocation and Factors- §§ 93.50-93.51

The amount to be allocated by formula to each State and DC is determined using the most recent U.S. Census Bureau data available for the same year for these geographic areas. Allocation amounts to the 50 States, DC, and Puerto Rico will be calculated using the sum of four need factors (weighted by priority) multiplied by the cost of producing housing in the State relative to the national average. The four need factors are:

- The ratio of the shortage of standard rental units both affordable and available to extremely low-income (ELI) renter households in the State to the aggregate shortage of standard rental units both affordable and available to ELI renter households in all the States (weight 0.5);
- The ratio of the shortage of standard rental housing both affordable and available to very low-income (VLI) renter households in the State to the aggregate shortage of standard rental units both affordable and available to VLI renter households in all the States (weight 0.125);
- The ratio of ELI renter households in the State living with either incomplete kitchen or plumbing facilities, more than one person per room, or paying more than 50 percent of income for housing costs to the aggregate of number of ELI households with these characteristics in all States (weight 0.25); and
- The ratio of VLI renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of VLI renter households with this characteristic in all States (weight 0.125).

Because the data described above is not available for insular areas, their allocations will be determined by multiplying the funds available times the ratio of renter households in each insular area to the total number of renter households in the 50 States, DC, Puerto Rico and the insular areas.

Minimum Allocations- § 93.52

The statute requires that each State and DC receive a minimum allocation of $3 million. Provided that the amount available for allocation is sufficient, each State and DC will receive the minimum grant. If funds are available after each State and DC receives its minimum allocation, Puerto Rico and each insular area will receive an allocation. If HTF funds are insufficient to provide the minimum grant to each State and DC, HUD will publish a notice in the federal register for public comment, describing an alternative method for allocating grants.

Reallocations by Formula- § 93.54

Any amounts that become available for reallocation (i.e., grant reductions, recaptured funds, etc.) shall be added to amounts for formula allocation in the succeeding fiscal year. Any reallocation of funds must be made only among all participating States, except those States from which the funds were recaptured or reduced.

SUPPART C- PARTICIPATION AND SUBMISSION REQUIREMENTS

Participation and Submission Requirements- §§ 93.100- 93.101

Only States or State-designated entities may be the HTF grantee. This includes the 50 States, Washington DC, the Commonwealth of Puerto Rico, and each of the insular areas.

A State must notify HUD in writing of its intention to become an HTF grantee for the first year of HTF funding no later than 30 days after HUD's publication of the formula allocation amounts.

In order to receive its grant, a State must include the HTF allocation plan in its submission of the consolidated plan in accordance with 24 CFR Part 91. The HTF grantee may directly fund projects or may choose to fund projects through one or more subgrantees.

Only units of general local government and State agencies may be HTF subgrantees. A subgrantee that is a unit of general local government must have a consolidated plan and include an HTF allocation plan in its consolidated plan. The HTF allocation plan for a State agency subgrantee must be included in the State's HTF allocation plan. States and subgrantees must solicit public comment on the proposed HTF allocation plan. Projects must be selected in accordance with the State's or subgrantee's HTF allocation plan, as applicable. The grantee must ensure that their subgrantees comply with all HTF requirements and other applicable laws, and carry out the State's responsibilities.

24 CFR PART 91- CONSOLIDATED SUBMISSIONS FOR CPD PROGRAMS

Consolidated Program Year- § 91.10

All of the Community Planning and Development programs, including the HTF, shall be administered by the State or subgrantee on a single consolidated program year which is established by the jurisdiction.

Strategic Plans- § 91.215 (b)(2) and § 91.315 (b)(2)

Under the affordable housing section of the strategic plan, the State and subgrantee (s) shall identify specific objectives that describe proposed accomplishments they hope to achieve. They must also specify the number of ELI and VLI households to whom rental housing and homeownership assistance will be provided as defined in 24 CRF 93.302 and 24 CFR 93.304 over a specific time period.

Action Plans- § 91.220 and 91.320

Each State and subgrantee must submit an HTF allocation plan as part of its annual action plan submission. The plan must describe how the State or subgrantee will distribute its HTF funds, including how it will use the funds to address its priority housing needs, what activities may be undertaken with those funds, and how recipients and projects will be selected to receive those funds. A subgrantee's HTF allocation plan must be consistent with the State's HTF requirements and HTF allocation plan.

Subgrantee's HTF Allocation Plan- § 91.220(l)(5)

If a jurisdiction is selected by the State to be a subgrantee, its HTF allocation plan must be consistent with the State's HTF requirements and include the following:

- The plan must identify priority factors for funding that shall include the following: geographic distribution (where HTF funding will be directed in the ensuing program year), the applicant's capacity, the extent to which rents are affordable to ELI households, the duration of affordability periods in rental projects, location of existing affordable housing, and other merits of the applications in meeting the jurisdiction's priority housing needs (such as housing accessible to transit or employment centers, sustainable or green building features, and housing that serves special needs populations);
- A description of eligible activities and eligibility requirements for recipients;
- A certification by each recipient that HTF-assisted housing will comply with HTF requirements;
- Performance goals that are consistent with the subgrantee's and State's proposed accomplishments;
- Rehabilitation standards that HTF-assisted project must meet as required by 24 CFR 93.301(b);
- Resale and Recapture guidelines, if HTF funds will be used for first-time homebuyers. These resale or recapture guidelines must be submitted and approved by HUD separate from the consolidated plan or action plan;
- The HTF affordable homeownership limits it will use when assisting first-time homebuyers. If the subgrantee does not use HUD-issued limits, the limits must be determined in accordance with 24 CFR 93.305 and approved by the State;
- Any preferences or limitations to a particular segment of the ELI or VLI population must be described in the action plan and are subject to 24 CFR 93.350 and 24 CFR 93.303; and
- Requirements and conditions under which existing project debt may be refinanced.

State's HTF Allocation Plan- § 91.320(k)(5)

The State's HTF allocation plan must describe the distribution of the HTF funds, and establish the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the State's priority housing needs. In addition, the plan must establish the maximum per-unit development subsidy limit for housing assisted with HTF funds. States are required to determine subsidy limits for all areas of the State; subgrantees must use the State-determined limits. If the HTF funds will be used for first-time homebuyers, it must identify the applicable resale and recapture provisions.

The plan must also reflect the State's decision to distribute HTF funds through grants to subgrantees and/or directly to applications submitted by eligible recipients. If the State selects applications submitted by eligible recipients, the plan must include the following:

- Provide priority for funding based on: geographic diversity (as defined by the State in the consolidated plan), the applicant's capacity, the extent to which the project has Federal, State, or local project-based rental assistance so that rents are affordable to ELI families, the duration of affordability periods in rental projects, and other merits of the applications in meeting the State's priority housing needs (such as housing accessible to transit or employment centers, sustainable or green building features, and housing that serves special needs populations), and applicant's non-federal leveraging resources;

- A description of eligible activities and eligibility requirements for recipients;
- A certification by each recipient that HTF-assisted housing will comply with HTF requirements;
- Performance goals and benchmarks that are consistent with State's proposed accomplishments;
- Rehabilitation standards that HTF-assisted project must meet as required by 24 CFR 93.301(b)(1);
- Resale and Recapture guidelines, if HTF funds will be used for first-time homebuyers. These resale or recapture guidelines must be submitted and approved by HUD separate from the consolidated plan or action plan;
- The HTF affordable homeownership limits that it will use when assisting first-time homebuyers – if the State does not use HUD-issued limits, the limits must be determined in accordance with 24 CFR 93.305;
- Any preferences or limitations to a particular segment of the ELI or VLI population must be described in the action plan and are subject to 24 CFR 93.350 and 24 CFR 93.303(d)(3); and
- Requirements and conditions under which existing project debt may be refinanced.

Performance Reports- § 91.520

The State and subgrantee must submit annual reports that describe the HTF program's accomplishments and the extent to which they complied with their approved HTF allocation plan and the requirements of 24 CFR part 93.

24 CFR PART 93 SUBPART D- PROGRAM REQUIREMENTS

Site and Neighborhood Standards- § 93.150

HTF grantees must administer its HTF program in a manner that provides housing that is suitable to facilitate and further full compliance with applicable provisions of the Civil Rights Act of 1964, the Fair Housing Act and HUD regulations. The site and neighborhoods standards at § 93.150 apply to new construction of rental projects receiving HTF funds.

Income Determinations- § 93.151

To ensure that the income targeting requirements are met, grantees must verify that each family occupying an HTF-assisted unit is income-eligible by determining the family's annual income. When determining eligibility, the grantee may use either of the two allowable income definitions, annual income as defined at 24 CFR 5.609[1] or adjusted gross income as defined in IRS Form 1040[2]. Only one definition can be applied to each HTF-assisted program or project. The methods for determining and

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[1] For the complete definition of annual income under 24 CFR 5.609, visit http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=24:1.1.1.1.5#se24.1.5_1609

[2] For the complete definition of adjusted gross income on the IRS form 1040, visit http://www.irs.gov/Credits-&-Deductions/Individuals/Earned-Income-Tax-Credit/Helpful-Definitions-and-Acronyms

calculating annual income for tenants and homebuyers are also addressed in the full text of the interim rule.

SUBPART E- ELIGIBLE AND PROHIBITED ACTIVITIES

Eligible Activities- § 93.200

HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for first-time homebuyers. Eligible activities include acquisition (including assistance to homebuyers, including manufactured housing), new construction, reconstruction, or rehabilitation of non-luxury housing with suitable amenities. HTF housing must be permanent housing.

Grantees must use at least 80 percent of its annual grant for rental housing and up to 10 percent for homeownership housing. Eligible activities include the following:

- Real property acquisition;
- Site improvements;
- Conversion;
- Demolition;
- Financing costs;
- Relocation costs;
- Operating costs and operating cost reserves (≤ 30 percent of each grant); and
- Reasonable administrative and planning cost.

*No more than one third of each annual allocation may be provided as operating cost assistance to rental housing being acquired, rehabilitated or newly constructed with HTF funds.

Forms of Assistance to Project- § 93.200(b)

- Equity investments;
- Interest-bearing loans or advances;
- Non-interest bearing loans or advances;
- Interest subsidies;
- Deferred payment loans;
- Grants; or
- Other forms of assistance approved by HUD.

Cost Allocation for Multi-Unit Projects- § 93.200(c)

For multi-unit projects, only the actual HTF-eligible development costs may be charged to the HTF program. Calculations for eligible development costs will depend on whether units are comparable or non-comparable in terms of size, features and number of bedrooms. This section of the rule describes how to calculate costs. After project completion, the number of designated HTF-assisted units may be reduced only in accordance with the exception authority provided under this section.

Terminated Projects- § 93.200(d)

An HTF-assisted project that is terminated before completion or does not meet the requirements for affordable housing constitutes an ineligible activity. The grantee must repay any HTF funds invested in an ineligible activity or project to its HTF account from which the funds were drawn.

Eligible Project Costs- § 93.201

HTF may be used to pay the following eligible costs:

- Development hard costs;
- Refinancing costs;
- Acquisition costs;
- Related soft costs;
- Operating cost assistance and operating cost assistance reserves (≤ 30 percent of annual grant);
- Relocation costs; and
- Costs related to payment of loans.

Operating Cost Assistance and Reserves- § 93.201(e)

HTF funds may be used to pay for operating cost assistance and operating cost assistance reserves for rental housing that is acquired, rehabilitated, reconstructed, or newly constructed with HTF funds. The grantee has the flexibility to provide up to one third of each annual grant for operating cost assistance and operating cost assistance reserves. The following conditions apply:

- Eligible costs include insurance, utilities, real property taxes and maintenance and scheduled payments to a reserve for replacement of major systems;
- Eligible costs must be calculated using the method described in this section;
- Operating cost assistance can ONLY be provided if the HTF-assisted units do not have project-based assistance;
- Operating costs assistance must be based on the underwriting of the project and must be specified in the written agreement between grantee and recipient;
- For reserves funded with non-appropriated HTF funds (i.e., the allocations from Fannie Mae and Freddie Mac):
    - The assistance must be calculated using HUD methodology.
    - The reserve may be funded for the amount estimated to be necessary for the entire period of affordability at the time of executing written agreement.
- For reserves funded with appropriated HTF funds:
    - The assistance must be calculated using HUD methodology.
    - For each grant, assistance is limited to the amount necessary for a period of up to five years.
- Funding for operating cost assistance may be provided in addition to funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months).

Administrative and Planning Costs- § 93.202

The grantee may use up to 10 percent of the HTF grant and program income receipted (combined sum total) to pay for reasonable administrative and planning costs of the HTF program.

HTF Funds and Public Housing- § 93.203

HTF funds may be used for rehabilitation or construction of public housing units that are part of the Choice Neighborhoods[3] program or that will receive Low Income Housing Tax Credits (LIHTCs). In these projects, new construction of public housing units developed with HTF funds is limited to replacement of units that were removed as part of a Choice Program grant, or as part of a mixed-financed development authorized by section 35 of the Housing Act of 1937. Any HTF unit that is developed as public housing must receive Public Housing Operating Fund assistance (and may receive Public Housing Capital Fund assistance) under section 9 of the 1937 Act. HTF-assisted public housing units that receive Public Housing Operating or Capital Funds may not receive HTF operating cost assistance or operating cost assistance reserves.

HTF funds can also be used in Rental Assistance Demonstration (RAD[4]) projects involving rehabilitation of existing public units that will be converted under RAD, or for new construction of units in a RAD project.

Prohibited Activities and Fees- § 93.204

HTF funds may not be used to:

- Provide assistance to a project previously assisted with HTF funds during the affordability period, except when providing assistance to a homebuyer to acquire housing previously assisted with HTF funds, or for renewal of operating cost assistance or an operating cost reserve;
    - Additional HTF funds may be committed to a project up to one year after project completion but the total assistance is subject to the State's maximum per-unit development subsidy limit.
- Pay for the acquisition of property owned by the grantee;
- Pay delinquent taxes, fees, or charges on properties to be assisted with HTF funds;
- Pay for political activities, advocacy, lobbying, counseling services (except for housing counseling), travel expenses (other than those eligible under § 93.202(b)), or preparing or providing advice on tax returns;
- Pay for administrative, outreach, or other costs to manage and operate the grantee's HTF funds; or
- Pay for any cost that is not eligible under § 93.201 and § 93.202.

Fees § 93.204(b)

Grantees may not charge (and must prohibit subgrantees and recipients from charging) servicing, origination, or other fees to cover the cost of administering the HTF program. Grantees may charge owners of rental projects reasonable annual fees for monitoring compliance during the affordability

[3] For more information on Choice Neighborhoods, visit http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn

[4] For more information on RAD, visit http://portal.hud.gov/hudportal/HUD?src=/RAD

period. Grantees may also charge nominal application fees (although these fees are not an eligible HTF cost) to eligible recipients, to discourage frivolous applications. All such fees are applicable credits under 2 CFR Part 200, subpart E.

Project owners are prohibited from charging fees that are not customary in rental housing (e.g., laundry room access fees). In addition, project owners may charge reasonable application fees to prospective tenants or fees for services such as transportation or meals, as long as the services are voluntary and the fees are charged for services provided. Parking fees are permitted only if they are customary for rental housing projects in the neighborhood.

SUBPART F- INCOME TARGETING

Income Targeting- § 93.250

The HTF sets income targeting requirements based on the annual amount of HTF funds available.

- In any fiscal year in which the total HTF funds available are less than $1 billion, the grantee must target 100 percent of its HTF funds for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater;
- When the total HTF funds available are equal to or exceed $1 billion, the grantee must use at least 75 percent of its HTF funds for the benefit of ELI families or families with incomes at or below the poverty line, whichever is greater; and
- Any grant funds not used to serve ELI families must be used for the benefit of VLI families.

SUBPART G- PROJECT REQUIREMENTS

Maximum Per-Unit Subsidy Amount- § 93.300(a)

The grantee must establish limits on the maximum amount of HTF funds that may be invested per unit for development of non-luxury housing, with adjustments for the number of bedrooms and the geographic location of the project. These limits must be reasonable. The grantee must include these limits in its annual action plan and update the limits annually.

Underwriting and Subsidy Layering- § 93.300(b)

Before committing funds to a project, the grantee must evaluate the project in accordance with guidelines it has adopted for determining a reasonable level of profit or return on a recipient's investment in a project. It must also ensure the following:

- Grantee may invest only what is necessary to provide quality affordable housing that is financially viable for, at a minimum, the affordability period required by the regulations;
- Grantee examines the sources and uses of funds (including any operating cost assistance and reserves or project-based rental assistance) for the project and determine that these costs are reasonable and will not provide a profit or return on the recipient's investment that exceeds the grantee's standards; and
- Grantee conducts an assessment of the current market conditions, experience and capacity of recipient, and firm written financial commitments for the project.

Note: A market analysis is not required for HTF-funded downpayment assistance.

PROPERTY STANDARDS

Property Standards-§ 93.301

Projects are eligible to receive HTF funds only if the housing will meet the applicable property standards upon completion.

New Construction Projects- § 93.301(a)

All HTF-assisted new construction projects must meet all applicable State and local codes, ordinances, and zoning requirements. In the absence of those codes, the housing must meet the International Residential Code or International Building Code (as applicable). All new construction projects must also meet the following requirements:

- The accessibility requirements of 24 CFR part 8; 28 CFR parts 35 and 36; and 24 CFR 100.205 as applicable;
- The energy efficiency standards established pursuant to section 109 of the Cranston-Gonzalez National Affordable Housing Act;
- Where relevant, the housing must be constructed to mitigate the impact of potential disasters, in accordance with applicable State and local codes, ordinances, and requirements, or other requirements established by HUD;
- The grantee must review and approve written cost estimates and ensure that construction contracts describe the work to be undertaken in sufficient detail; and
- The grantee must conduct progress and final inspections to ensure that work is done in accordance to applicable codes and construction contracts.

Rehabilitation Projects- § 93.301(b)

Grantees must establish rehabilitation standards for all HTF-assisted housing rehabilitation activities. The standards must describe the methods and materials and the applicable codes that the housing must meet at project completion. The rehabilitation standards must address each of the following:

- If the housing is occupied, it must be free of all life-threatening deficiencies;
- For rental housing, the grantee must estimate the remaining useful life of major systems;
- For multi-family projects with 26 units or more, the grantee must determine the useful life of major system through a capital needs assessment and require a replacement reserve when the useful life of systems is less than the affordability period.
- For homeownership housing, the grantee must ensure that each of the major systems has a remaining useful life for a minimum of five years or repair or replace the system;
- The housing must meet the lead-based paint requirements at 24 CFR part 35;
- The housing meet the accessibility requirements of 24 CFR part 8; 28 CFR parts 35 and 36; and 24 CFR 100.205 as applicable; and 24 CFR 100.205 as applicable; and other improvements that are not required by the regulations or statute that permit use by a person with disability;
- Where relevant, the housing must be rehabilitated to mitigate the impact of potential disasters, in accordance with applicable State and local codes, ordinances, and requirements, or other requirements established by HUD;

- All housing must meet State and local codes, ordinances, and requirements or, in the absence of those codes, the International Existing Building Code of the International Code Council;
- All housing must be decent, safe, sanitary and in good repair as described at 24 CFR 5.703. HUD will establish the minimum deficiencies that must be corrected under the grantee's rehabilitation standards based on inspectable items and inspectable areas from the HUD prescribed physical inspection procedures (Uniform Physical Condition Standards) pursuant to 24 CFR 5.705;
- The grantee must review and approve written cost estimates and ensure that construction contracts and work will meet the rehabilitation standards; and
- The grantee must conduct initial, progress and final inspections to ensure work is done in accordance to work write-ups.

Acquisition of Standard Rental Housing- § 93.301(c)(1) and (2)

If the housing acquired was newly constructed or rehabilitated less than 12 months before the commitment of HTF assistance, then it must meet the property standards at § 93.301(a) for new construction or § 93.301(b) for rehabilitation projects, as applicable. All other existing housing that is older than 12 months before the commitment of HFT assistance must meet the property standards at § 93.301(b) for rehabilitation projects.

Acquisition of Existing Homeownership Housing- § 93.301(c)(3)

All existing homeownership housing acquired with HTF funds must be decent, safe, sanitary, and in good repair. In addition, the housing must meet all applicable State and local standards and code requirements and be free of deficiencies identified by HUD based on inspectable items and inspected areas from HUD's inspection procedures (Uniform Physical Condition Standards) pursuant to 24 CFR 5.705. If the housing does not meet these standards, then it must be rehabilitated and must meet § 93.301(c)(3) or it cannot be assisted with HTF funds.

Manufactured Housing- § 93.301(d)

All new manufactured housing (including housing that replaces an existing substandard unit) must meet the following requirements:

- Meet the Manufactured Home Construction and Safety Standards at 24 CFR part 3280 and comply with applicable State and local laws or codes, or the manufacturer's written instructions for installation of manufactured housing units in the absence of such laws or codes;
- Must be on a permanent foundation;
- Be connected to permanent utility hook-ups; and
- Be located on land owned by the HTF-assisted owner or on land with a lease equal to the applicable affordability period.

All existing manufactured housing must meet the following requirements:

- The foundation and anchoring of all rehabilitated manufactured housing must meet all applicable State and local codes, ordinances, and requirements or in the absence of those codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285; and
- Manufactured housing that is rehabilitated must meet the standards at § 93.301(b).

Ongoing Property Condition Standards- § 93.301(e)

For all rental housing, the grantee must establish property standards to ensure property owners maintain units as decent, safe, and sanitary, and in good repair that apply throughout the affordability period. The ongoing property standards must include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (UPCS). In addition, the ongoing property standards must address health and safety, lead based-paint, frequency of inspection, corrective or remedial actions, and inspection procedures during the affordability period as specified in the regulation.

Environmental Review- § 93.301(f)

All new construction, acquisition or acquisition rehabilitation activities (including manufactured housing) must meet the applicable environmental requirements specified in 24 CFR 93.301(f) for historic preservation, archaeological resources, farmland, airport zones, Coastal Barrier Resource System, coastal zone management, floodplains, wetlands, explosives and hazards, contamination, noise, endangered species, wild and scenic rivers, safe drinking water, and sole source aquifers.

Note: HTF is not subject to 24 CFR part 58 but in the administration of HTF, HUD is required to comply with the National Environmental Protection Act. Therefore, the interim rule establishes environmental review standards for HTF, which are included in the property standards section. These standards are substantively the same or very similar to the requirements of 24 CFR part 58. HUD expects to issue guidance on the implementation of these standards.

QUALIFICATION AS AFFORDABLE HOUSING: RENTAL HOUSING

Eligible Tenants and Rents- § 93.302(a) and (b)

HTF-assisted units must be occupied by income-eligible households. HTF rents include utilities and are set at 30 percent of the income of a household at either 30 percent or 50 percent of area median income, adjusted for the number of bedrooms in the unit. If the unit receives Federal or State project-based rental subsidy, the maximum rent is the rent allowable under that rental subsidy program as long as the tenant pays no more than 30 percent of tenant's adjusted income.

Initial Rents and Utility Allowances- § 93.302(c)

The grantee must establish maximum monthly allowances for utilities and services and annually review and approve rents proposed by HTF-assisted project owners. If the tenant is paying the utilities, the grantee must ensure that the rents do not exceed the maximum rent minus the monthly utility allowance.

Periods of Affordability- § 93.302(d)

HTF-assisted units must meet the affordability requirements for a period of not less than 30 years, which begins at project completion. The grantee may impose longer periods of affordability. The affordability requirements must be imposed and recorded in accordance with State recordation laws. The grantee may use preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions may be terminated upon foreclosure or transfer in lieu of foreclosure; in those situations the grantee is obligated to repay all HTF funds invested in the project.

Tenant Income and Over-income Tenant- § 93.302(e) and (f)

Project owners must determine tenant eligibility by calculating the household's annual income using one the two definitions of income, 24 CFR part 5.609 or the IRS Form 1040. Income determinations are conducted at initial occupancy and the project owner must re-examine each tenant's annual income each year during the period of affordability. A project owners who re-examines a tenant's annual income through self-certification statements must examine the source documentation of the income of each tenant every 6th year of the affordability period. For HTF units that also receive project-based rental assistance, annual income must be reexamined based on the rules applicable to the project-based assistance.

HTF-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the income of existing tenants. When that occurs, grantees must make every effort to bring the units back into compliance as soon as is feasible.

Fixed and Floating HTF Units- § 93.302(g)

In a project containing both HTF-assisted and other units, the grantee must designate fixed or floating HTF units at the time of project commitment in the written agreement and the actual HTF units must be identified not later than the time of project completion. Fixed units remain the same throughout the affordability period and floating units are changed to maintain compliance with the requirements of this section during the affordability period.

Tenant Protections and Selection- § 93.303

There must be a written lease between the tenant and owner of HTF-assisted rental housing for a period of not less than 1 year, unless a shorter period is mutually agreed upon.

Prohibited Lease Terms- § 93.303(b)

The lease may not contain any of the following provisions:

- Agreement to be sued;
- Treatment of property;
- Excusing owner from responsibility;
- Waiver of notice to be sued;
- Waiver of legal proceedings;
- Waiver of a jury trial;
- Waiver of right to appeal court decision;
- Tenant chargeable with cost of legal actions regardless of outcome; and
- Mandatory supportive services.

Termination of Tenancy- § 93.303(c)

An owner may not terminate the tenancy or refuse to renew the lease of a tenant of HTF-assisted rental housing, except for serious or repeated violation of the terms and conditions of the lease or for violation of applicable Federal, State or local law, or for other good cause. To terminate or refuse to renew tenancy, the owner must provide written notice to the tenant specifying the grounds for the action and providing a specific period for vacating that is consistent with State or local law.

Tenant Selection- § 93.303(d)

An owner of HTF-assisted rental housing must comply with the affirmative marketing requirements established by the grantee pursuant to § 93.350, and adopt and follow written tenant selection policies and criteria that:

- Limit the housing to income-eligible families;
- Are reasonably related to the applicant's ability to perform the obligations of the lease;
- Limit eligibility or give preference to a particular segment of the population if permitted in its written agreement with the grantee (and only if described in the grantee's consolidated plan) and preference is established in accordance with the requirements further detailed in this section;
- Do not exclude applicants with vouchers under the Section 8 Tenant-based Assistance: Housing Choice Voucher program or HOME Tenant-based Rental Assistance;
- Provide for the selection of tenants from a written waiting list in the chronological order of their applications, insofar as is practicable; and
- Give prompt written notification to any rejected applicant describing the grounds for any rejection.

QUALIFICATION AS AFFORDABLE HOUSING: HOMEOWNERSHIP

Homeownership Activities- § 93.304

The grantee is permitted to use no more than 10 percent of its annual HTF grant to fund housing that is for purchase by first-time homebuyers and must meet the following requirements:

- Housing must be single family housing as defined at § 93.2;
- Housing must be modest as defined at § 93.305;
- Homebuyer must be income-eligible at the time the contract is signed;
- Housing must be the principal residence of the family throughout the affordability period;
- Family is required to complete a program on financial education and homeownership counseling from a HUD-approved counseling agency;
- Housing must meet the affordability requirements in accordance with the grantee's resale or recapture requirements (provisions must be HUD approved);
- Single family properties with more than one unit must comply with the special consideration requirements for these types of projects, as applicable;
- Housing under a lease-purchase program must comply with lease-purchase deadlines or be converted to rental housing and operated as such;
- Housing not under contract within 9 months of the date of completion of construction or rehabilitation must be converted to rental and operated as such;
- Grantees may use preemptive rights to preserve previously HTF-assisted housing but must ensure that housing is in good repair and sold to a new income-eligible first-time homebuyer and that the total amount of HTF assistance (original and additional HTF funds) does not exceed

the per-unit subsidy limits. Additional HTF funds may not be used if the mortgage in default was funded with HTF funds;

- Homebuyer assistance may be provided through lending institutions, but the grantee must verify that the family is income-eligible, qualifies as a first-time homebuyer and the unit is inspected for compliance with applicable property standards;
- Grantee must determine that first mortgage financing fees are reasonable and prohibit lenders from charging fees (e.g. origination fees) to obtain the HTF assistance; and
- Grantee must have written policies for underwriting standards, anti-predatory lending and the refinancing of loans.

Modest Housing- § 93.305

Housing that is HTF-assisted must meet the definition of modest housing as follows:

- The purchase price of single family housing does not exceed 95 percent of median purchase price for the area for newly constructed or standard housing; and
- The grantee may use the HTF affordable homeownership limits published by HUD, or may calculate its own limits using the HUD-prescribed methodology and include the limits annually in its action plan for HUD review.

Resale Requirements- § 93.305(b)(1)

The grantee must establish the resale or recapture requirements that HTF-assisted housing must meet and include them in its annual action plan.

If resale provisions are imposed on HTF-assisted housing, the property must meet the affordability requirements for not less than 30 years. If the housing is sold, transferred, or is no longer the principal residence of original buyer during the period of affordability, the following applies:

- Subsequent purchaser must be income-eligible, qualify as a first-time homebuyer, and use the property as their principal residence;
- The price at resale must provide original HTF-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of income-eligible homebuyers;
- The grantee must define fair return on investment and affordability to a reasonable range of very low income homebuyers and address how it will make the housing affordable to subsequent eligible buyers;
- Affordability restrictions must be imposed and recorded;
- The affordability restrictions may terminate upon foreclosure, transfer in lieu of foreclosure; and
- The grantee may use preemptive rights to purchase the housing before foreclosure to preserve affordability.

Recapture Requirements- § 93.305(b)(2)

If recapture provisions are imposed on HTF-assisted housing, the affordability periods are based on the amount of HTF assistance provided to the homebuyer per unit as follows:

- Under $30,000 : 10 years
- $30,000-$50,000 : 20 years
- Over $50,000: 30 years

The use of recapture provisions ensure that grantees recoup all or a portion of the HTF assistance to the homebuyer if the housing ceases to be its principal residence during the period of affordability. The grantee may use one of the HUD approved recapture provisions listed below or establish its own, with HUD approval. The grantee can only recapture the direct HTF assistance to a homebuyer. Subsequent homebuyers may assume the HTF assistance for the remainder of the period of affordability if they do not receive additional HTF assistance and are income-eligible. Regardless of the provision used, the amount recaptured cannot exceed the net proceeds when recapture is triggered by a voluntary or involuntary sale. The HUD approved recapture provisions are as follows:

- Recapture the entire amount of assistance;
- Reduce the recapture amount on a prorated basis during the affordability period;
- Share in the net proceeds in proportion to an established formula; or
- Recapture proceeds remaining after HTF-assisted owner has recovered their investment, if any.

SUBPART H- OTHER FEDERAL REQUIREMENTS

Other Federal Requirements and Nondiscrimination; Affirmative Marketing - § 93.350

The federal requirements in 24 CFR part 5, Subpart A, are applicable to participants in the HTF program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended, or ineligible contractors; and drug-free workplace.

Each grantee must adopt and follow affirmative marketing procedures and requirements as described in this section for rental projects containing five or more HTF-assisted housing units and for homeownership assistance programs. The grantee must take steps to ensure to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability.

Lead-Based Paint- § 93.351

Housing assisted with HTF funds is required to be lead safe and subject to the Lead Safe Housing Regulations at 24 CFR part 35, subparts A, B, J, K, and R.

Displacement, Relocation, and Acquisition- § 93.352

The grantee must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, non-profit organizations, and farms) as a result of a project assisted with HTF funds. To the extent feasible, displaced residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project. This section contains the full content of relocation requirements that apply to HTF-assisted housing.

Conflict of Interest- § 93.353

In the procurement of property and services by grantees and subgrantees, the conflict of interest provisions in 2 CFR 200.318 apply. In all cases not governed by 2 CFR 200.318, the provisions described in this section apply.

Funding Accountability and Transparency Act- § 93.354

The HTF grant to the grantee and all assistance provided to subgrantees and recipients shall be considered a Federal award for purposes of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note).

Eminent Domain- § 93.355

HTF funds cannot be used in conjunction with property taken by eminent domain, unless eminent domain is employed only for a public use, except that, public use shall not be construed to include economic development that primarily benefits any private entity.

SUBPART I- PROGRAM ADMINISTRATION

Housing Trust Fund Accounts and Grant Agreements- §§ 93.400- 93.401

- HUD will establish an HTF US Treasury account for each grantee which will include the annual grant and funds reallocated to the State by formula;
- Grantees may use either a separate HTF local account or a subsidiary account within its general fund as the HTF local account;
- HUD will reduce or recapture funds in the HTF Treasury account that are not committed within 24 months after the date of HUD's execution of the HTF grant agreement;
- HUD will reduce or recapture funds in the HTF Treasury account that are not expended within 5 years after the date of HUD's execution of the HTF grant agreement; and
- Allocated formula funds will be made available pursuant to an HTF grant agreement (§ 93.401);

Program Disbursement and Information System- § 93.402

- HTF funds will be managed through a computerized disbursement and information system (IDIS), which allocates, reallocates, collects and reports information on the use of HTF funds in the HTF Treasury account;
- Grantees must report on the receipt and use of all program income in IDIS;
- The grantee must develop and maintain a system to ensure that each recipient and subgrantee uses HTF funds in accordance with the requirements described in this section; and
- Grantees must set-up and complete projects in IDIS according to specified deadlines (§ 93.402(b) and (d)).

Program Income and Repayments- § 93.403

- Program income must be treated as HTF funds and must be used in accordance with the requirements described in this section;
- HTF funds must be repaid if project is terminated before completion or becomes ineligible during the period of affordability (§ 93.403(b); and
- HUD will instruct the grantee to make repayments either its Treasury account or its local account.

Grantee Responsibilities- § 93.404(a)

The grantee is responsible for managing the day-to-day operations of its HTF program and ensuring that HTF funds are used in accordance with all program requirements. The use of subgrantees or contractors does not relieve the grantee of this responsibility. The grantee must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities to ensure that requirements of this part are met.

Written Agreements- § 93.404(b) and (c)

Before disbursing any HTF funds to any entity, the grantee must enter into a written agreement with that entity to ensure compliance with HTF requirements. The contents of the agreement may vary depending upon the role of the entity with respect to program functions and types of projects undertaken. The written agreement must contain the basic requirements by role and the minimum provisions that will be required. This section describes the minimum provisions outlined for each of the following entities: subgrantee, eligible recipient, and first-time homebuyer.

Onsite Inspections- § 93.404(d)

The grantee must perform onsite inspections of each HTF-assisted project at project completion. For rental housing, the property must be inspected during the period of affordability to determine that the housing complies with the applicable property standards. The rule specifies the following inspection requirements for rental housing:

- The onsite inspections must occur 12 months after project completion and at least once every 3 years thereafter during the period of affordability;
- If there are observed deficiencies for any inspectable items, a follow-up onsite inspection must occur within 12 months or other reasonable timeframe established by grantee;
- Life-threatening health and safety deficiencies must be corrected immediately;
- On an annual basis, the property owner must certify to the grantee that each building is suitable for occupancy;
- Inspections must be based on a statistically valid sample of units appropriate for the size of the HTF-assisted project; and
- The grantee must verify the information submitted by project owners.

Financial Oversight- § 93.404(e)

The grantee must examine regularly, at least annually, the financial condition of HTF-assisted rental housing with 10 or more HTF-assisted units to determine the continued financial viability of the housing and take actions to correct problems.

Applicability of Uniform Administrative Requirements, Cost Principles, and Audits- § 93.405

The requirements of 2 CFR part 200 apply to HTF grantees and subgrantees with a few exceptions listed in this section. When there is a conflict between the definitions in 2 CFR part 200 and 24 CFR part 93, the definitions in part 93 govern.

Audits- § 93.406

Audits of the grantee and sub-grantees must be conducted in accordance with 2 CFR part 200 subpart F. The grantee's use of HTF funds must be audited not less than annually to ensure compliance with this part. HTF recipients must provide a cost certification and annual audit to the grantee for each project assisted with HTF funds.

Recordkeeping- § 93.407

Each grantee must establish and maintain sufficient records to enable HUD to determine whether the grantee has met the requirements of this subpart. At a minimum, the following records are required:

- Program records;
- Project records;
- Financial records;
- Program administration records; and
- Records concerning other federal requirements.

All records pertaining to each fiscal year's allocation of HTF funds must be retained in a secure location for the most recent five-year period, except as provided in this section.

Performance Reports- § 93.408

Each grantee must develop and maintain a system to track the use of its HTF funds, and submit annual performance and management reports on its HTF program in accordance with 24 CFR 91.520. HUD will make the performance and management reports publicly available.

SUBPART J- PERFORMANCE REVIEWS AND SANCTIONS

Accountability of Recipients- § 93.450

The grantee shall review each recipient to determine compliance with the requirements of this subpart and the terms of the written agreement in accordance with the grantee's policies, procedures, and systems established.

Misuse of Funds- § 93.450(a)

Reimbursement is required if any recipient of HTF assistance is determined to have misused HTF funds. The grantee must require that, within 12 months after the determination of misuse, the recipient reimburse the grantee for such misused amounts and return any amounts that remain unused or uncommitted for use.

Reduction for Failure to Obtain Return of Misused Funds- § 93.450(b)

HUD will reduce a HTF grantee's grant in any year the grantee fails to obtain reimbursement or return of the full amount required to be reimbursed or returned to the grantee.

Performance Reviews- § 93.451

HUD will review the performance of each grantee in carrying out its responsibilities, at least annually. HUD will rely primarily on information obtained from the grantee's records and reports, findings from onsite monitoring, audit reports, and information generated from IDIS.

Corrective and Remedial Actions- § 93.452

If the grantee fails to demonstrate compliance in administering its HTF program, HUD will take corrective and remedial actions described in § 93.452 to prevent continuation of noncompliance, and to mitigate, to the extent possible, its adverse effect or consequences, and prevent its reoccurrence.

Notice and Opportunity for Hearing; Sanctions- § 93.453

If HUD finds, after reasonable notice and opportunity for hearing, that a grantee has substantially failed to comply with any provision of this subpart, HUD shall reduce the funds in the grantee's HTF account in order to repay to HUD the amount of the HTF grant which was not used in accordance with the applicable requirements. In addition, HUD may prevent withdrawals from the grantee's HTF account, restrict the grantee's activities, remove the State from participation in allocations or reallocations of funds, or terminate any HTF assistance to the grantee.

When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the grantee. Proceedings will be conducted in accordance with 24 CFR part 26.