OHIO HOUSING FINANCE AGENCY

# 4% LIHTC
# Qualified Allocation Plan
## First Draft

Office of Multifamily Housing | **September, 20 2023**

**Seeking to provide input?**

OHFA will be accepting comments on these draft guidelines beginning Wednesday, September 20, 2023 at 12:00 p.m. Eastern Time (ET) through Tuesday, October 10, 2023 at 5:00 p.m. ET. Comments may be submitted via e-mail to 4PercentComments@ohiohome.org

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# A. 4% LIHTC QAP Overview

## Purpose

Pursuant to 26 U.S.C. §42(m), each state credit agency must craft a Qualified Allocation Plan (QAP) for the allocation of federal Low-Income Housing Tax Credits (LIHTCs). Although the LIHTC program is governed by the Internal Revenue Service (IRS), each state credit agency must design and administer a QAP setting forth the "selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions." As the state credit agency for the state of Ohio, this document serves as the QAP for allocating 4% LIHTCs—previously known as 30% Present Value LIHTCs prior to passage of Section 201 of the Consolidated Appropriations Act, 2021 (P.L. 116-260)—which are not subject to the state credit ceiling.

For the OHFA process of administering 9% LIHTCs—previously known as 70% Present Value LIHTCs prior to enactment of Section 131 of the Consolidated Appropriations Act, 2016 (P.L. 114-113)—which are subject to the state credit ceiling under 26 U.S.C. §42(h)(3), please see the Agency's most recent 9% LIHTC QAP.

## 4% LIHTCs

*United State Code: 26 U.S.C. §42*
*Code of Federal Regulations: 24 C.F.R. §§1.42-1 – 1.42-19T*

The LIHTC program was created through the Tax Reform Act of 1986 and serves as the federal government's central mechanism for the development of affordable housing today. Although governed by the Internal Revenue Service (IRS), it is administered on a state-by-state basis through state housing credit agencies. As Ohio's housing credit agency, OHFA retains responsibility for allocating federal LIHTCs by establishing housing priorities appropriate to local conditions through a Qualified Allocation Plan (QAP) referenced in 26 USC §42(m).

Tax credits are dollar-for-dollar reductions in federal tax liability. Because affordable rental housing cannot be funded with LIHTCs directly, developers enter into an agreement with investors directly or through syndicators—organizations that act on behalf of investors—to pass the benefits of LIHTCs on to entities that can use them. In exchange, these direct investors or syndicators provide equity that, along with other resources, helps finance the development of affordable rental housing. Federal statute ensures that properties funded with LIHTC equity serve low-income tenants by requiring that LIHTC property owners execute an Extended Low-Income Housing Commitment per 26 USC §24(h)(6)(b) which regulates operations for a minimum 30-year period.

The LIHTC program includes two distinct types of LIHTCs: 9% and 4%. The 9% LIHTC is a limited resource with an annual credit ceiling determined by multiplying the state's population by a statutorily defined per capita multiplier. The 9% LIHTC value is calculated as 9% of a proposed project's qualified basis over 10 years. 9% LIHTC policies can be found in the most recently-published 9% LIHTC QAP. Contrarily, the 4% LIHTC is not limited by the state's annual credit ceiling; however, it's value is only worth 4% of a project's qualified basis over 10 years, or 2.25 times less, on average. Therefore, 4% LIHTC deals typically must secure funding from additional sources to achieve financial feasibility. Exhibit 1 below details how 9% and 4% LIHTCs are calculated.

Unlike the 9% LIHTC, to claim the full amount of 4% LIHTC, at least 50% of a project's aggregate basis[1] must be funded with residential rental private activity bonds (PABs) per 26 U.S.C. §42(h)(4)(B). If a project is financed with less than 50%, the 4% LIHTC amount is pro-rated on the portion of aggregate basis that is financed with PABs, cutting the resulting LIHTC allocation by at least half. Therefore, PABs remain an essential piece of structuring 4% LIHTC projects.

Should PAB volume become limited, OHFA must prioritize the allocation of 4% LIHTCs by preferences outlined in 26 U.S.C. §42(m)(1)(B) and selection criteria referenced in 26 U.S.C. §42(m)(1)(C).

*Exhibit 1: Calculating LIHTC Equity, Example 9% vs. 4% LIHTC Project*

*Assume a hypothetical 60-unit new construction project is being proposed in which 100% of the units will be LIHTC-restricted and the site is located outside of a Qualified Census Tract (QCT)[2] or Difficult Development Area (DDA)[3].*

| LIHTC Calculation | 4% LIHTC Project | 9% LIHTC Project |
|---|---|---|
| Total Development Costs (TDC): | $17,000,000 | $17,000,000 |
| - Ineligible Costs[4] | $2,000,000 | $2,000,000 |
| = Eligible Basis | $15,000,000 | $15,000,000 |
| + QCT/DDA Basis Boost: | N/A | N/A |
| = Qualified Basis: | $15,000,000 | $15,000,000 |
| **X Credit Rate** | **4%** | **9%** |
| = Annual LIHTCs | $600,000 | $1,350,000 |
| X 10 Years (Total LIHTC): | $6,000,000 | $13,500,000 |
| X Equity Price: | $0.91 | $0.91 |
| **= Total LIHTC Equity:** | **$5,460,000** | **$12,285,000** |
| TDC Funded with LIHTC Equity: | 32% | 72% |

## Residential Rental Private Activity Bonds

*United State Code: 26 U.S.C. §142*
*Code of Federal Regulations: 26 C.F.R. §§1.141-1.150-5*

Applicants of 4% LIHTC projects must fund at least 50% of a project's land and aggregate basis with 26 U.S.C. §142(d) residential rental private activity bonds (PABs) to claim the full LIHTC amount. PABs are debt securities issued by state and local governments to finance activities that advance a public interest, of which residential rental projects is just one of 30 such federally-defined activities. PABs issued for qualified private activities benefit from federal tax exemption on interest payments made to bondholders. This tax exemption typically reduces PAB interest rates vis-à-vis debt that is not tax exempt.

[1] Aggregate basis is essentially depreciable basis. Unlike eligible basis, aggregate basis can include the cost of commercial space.
[2] The term Qualified Census Tract (QCT) is defined in 26 U.S.C. §42(d)(5)(B)(ii) as any census tract designated by HUD in which either (a) 50% or more of households have an income less than 60% of the area median income (AMI) or (b) has a poverty rate of at least 25%.
[3] The term Difficult Development Area (DDA) is defined in 26 U.S.C. §42(d)(5)(B)(iii) as any area defined by HUD which has high construction, land, and utility costs relative to AMI.
[4] Eligible basis is defined in the Internal Revenue Code (IRC) §42 Audit Technique Guide as the total allowable cost associated with the depreciable residential rental project. Chapter 8 identifies specific development costs that are ineligible and must be removed from eligible basis.

PABs are limited by an annual state volume cap ceiling. For 2023, the total state of Ohio volume cap for PABs is approximately $1.41 billion[5]; however, this is across all private activities. Under Ohio Administrative Code (OAC) Chapter 122-4, the Ohio Department of Development (Development) serves as the administrating agency on behalf of the state of Ohio for annual PAB volume cap. Volume cap is distributed among private activities in accordance with OAC Chapter 122-4-02; the lesser of $120 million or 15% of the state ceiling is set aside for residential rental projects. More information on PAB volume cap can be found on Development's website.

Per 26 U.S.C. §142(k)(5)(B)(ii), any unused PAB volume cap in a calendar year can be carried forward for three calendar years following the year in which the volume cap was left unused. OHFA retains the ability under OAC Chapter 122-4-05(A)(6) to carry forward unused PAB volume cap for single-family mortgage revenue bonds and use such "carryforward" for any of its lawful purposes, including residential rental projects. When OHFA has available state PAB volume cap under the regulatory allocation described above or receives carryforward, OHFA itself can act as the PAB issuer; otherwise, applicants must seek residential rental PABs either directly from Development or a qualified local issuer.

[5] Per IRS Revenue Procedure 2022-38 Section 3.20, the State of Ohio's 2023 volume cap for PABs is $120 multiplied by the state population of 11,756,058 per IRS Bulletin 2023-12.

# B. Program Calendar

Applications will be accepted on a first come, first served basis. Applicants must contact OHFA 30 calendar days in advance of applying to submit a Pre-Application. Final Applications must be complete at the time of submission and pass the Minimum Financial and Threshold Review before assigned to an OHFA Analyst for review.

| Date | Programmatic Benchmark |
|---|---|
| First Monday in February through the Third Friday in November | Open Submission |

# C. Fee Schedule

Non-refundable fees noted below must be submitted with the respective item. Fees may change without QAP amendment.

| Fee Type | Fee Amount |
|---|---|
| Final Application Fee | $3,500 |
| HDL Application Fee *(at Final Application, if applicable)* | See the most current HDL Guidelines |

Application fees must be paid using Automated Clearing House (ACH) with the Final Application. OHFA will not accept checks. Please note, OHFA does not have an online ACH payment portal. Payments should be submitted via your bank. Following approval of the Pre-Application, Agency staff will send OHFA's account information to process the ACH payment.

# D. Application Process

## How to Submit

All Pre-Application and Final Application submissions must be made via the Agency's Multifamily Development File Transfer Site (FTS). If an applicant does not already have access to the FTS, the individual must e-mail MultifamilyFTP@ohiohome.org prior to the Pre-Application deadline to secure user access. All application materials must be submitted in .ZIP format. Avoid using any special characters (e.g., "*", "&", or "@", among others) in naming conventions for projects. OHFA will not accept applications submitted via email, another online file sharing site (e.g., Dropbox, Google Drive), or flash drive. Projects must be individually uploaded to the FTS using the following process:

- Step 1. Upload one, singular .zip file for each individual application.
- Step 2. Insert project name and select funding round (4% LIHTC) and application type.
- Step 3. Click Validate File.

After submitting your project(s), e-mail the 4% LIHTC Section Chief indicating that the project(s) has been submitted. A confirmation e-mail will be automatically sent to the contact's email address.

Additionally, at Final Application, a 11” X 17” hard copy 80% permit set of architectural plans are required to be submitted in accordance with the most recently-published Design and Architectural Standards. Please submit architectural plans to the following address:

Ohio Housing Finance Agency, 3rd Floor
Attn: Office of Multifamily Housing
2600 Corporate Exchange, 3rd Floor
Columbus, Ohio 43231

## Pre-Application and Final Application Submission Disclaimer

All Pre-Application and Final Application materials submitted become the property of OHFA and shall be public information unless a statutory exception exists which would thereby determine that such information cannot be released to the public. If you have information in your Pre-Application or Final Application that you believe has a good faith legal basis for an exemption to the public records laws, you must identify each and every occurrence of the information in the proposal on a separate page titled “Exemptions to the Public Records Law” and clearly label the material as such. OHFA may post publicly post materials received.

## Pre-Application Package

At least 30 days prior to submitting a Final Application, OHFA will require a Pre-Application package submitted via the FTS. Applicants will not be allowed to submit a Final Application unless a Pre-Application has been approved by OHFA staff. The Pre-Application package will be available on the OHFA website by the date indicated in the Program Calendar and includes the following components:

- Pre-Application spreadsheet with basic project information
- Programmatic Exception Request Form(s) (if applicable) for allowable Programmatic Exceptions listed herein or those outlined in the most recently-approved Multifamily Underwriting Guidelines and Design and Architectural Standards (DAS).
- Development Team Experience and Capacity Review, including all of the following elements:
    - A Development Team Entity Identification spreadsheet which provides information on the lead developer, any co-developers (if applicable), the parent entity of each general partner or managing member, the development consultant (if applicable), management company, and general contractor.
    - A current real estate owned (REO) schedule for all existing LIHTC projects for which the lead developer and any co-developers (if applicable) maintain an ownership interest indicating the debt coverage ratio and income to expense ratio, with an explanation for any project that is below 1.0.
    - A Financial Capacity Analysis spreadsheet to be completed by the accounting firm that prepared audited financial statements for the lead developer and any co-developers (if applicable) or prepared by the CFO or an authorized representative when audited financial statements are not available.
    - A Lien and Litigation report dated within 30 days of the Pre-Application submission for the county in which the project is located, the state of Ohio, and any federal courts.

## Final Application Process

The Final Application process involves four major steps:

### (1) Minimum Financial and Threshold Review

Final Applications must be complete at the time of submission and meet a Minimum Financial and Threshold Review before being assigned to an OHFA Analyst for review. At a minimum, the application will be reviewed for the following minimum standards:

- All threshold submission items referenced herein are included and properly completed
- One of the eligible LIHTC minimum set-aside selections referenced in 26 U.S.C. §42(g) is made and the rent breakdown properly reflects the selected set-aside
- If a project-based rental subsidy contract is being contemplated, such subsidy contract (1) meets the minimum requirements of the Rental Subsidy threshold requirements referenced herein and found in the most recently-published Multifamily Underwriting Guidelines and (2) is properly reflected in the rent breakdown
- Operating expenses on a per-unit, per-annum (PUPA) basis are within the interquartile range (IQR) of OHFA's most recently-published Operating Expense Calculator data. If operating expenses are above the IQR, an explanation must be provided to validate high costs.
- Total development costs on a per-unit and per-gross square foot basis are within (1) the Cost Containment Standards listed below and (2) the IQR of OHFA's rolling, five-year database of approved 4% LIHTC projects. If costs are above the IQR, but below the Cost Containment Standards, an explanation must be provided to validate high costs.
- An appraisal meets OHFA's requirements listed herein and in OHFA's most recently-published Multifamily Underwriting Guidelines
- Conditional Financial Commitments (1) meet the requirements herein and those referenced in the most recently-published Multifamily Underwriting Guidelines and (2) match information provided in the Affordable Housing Funding Application (AHFA), OHFA's template proforma.
- The debt service coverage ratio (DSCR) or Income-to-Expense Ratio (if the proposed financing will not include hard-pay debt) are within the limits established by the most recently-published Multifamily Underwriting Guidelines.

Applications that do not meet all Minimum Financial and Threshold review criteria must be resubmitted in whole as a new application. Applicants must resubmit within the window or will be required to submit the following year using the most recently-approved guidelines.

### (2) Full Threshold, Underwriting, and Architectural Review

Following approval of a Minimum Financial and Threshold Review, OHFA analysts will complete a full Threshold and Underwriting Review. This review involves a comprehensive analysis of the project's compliance with the most recent Multifamily Underwriting Guidelines and threshold requirements outlined in these Guidelines and compliance with the most recent State of Ohio LIHTC and Housing Development Loan guidelines, if applicable. The assigned OHFA analyst will draft a review letter detailing any deficiencies. Applicants will have two weeks to cure any outlined deficiencies. Deficiencies must be cured; otherwise, the application may be rejected.

OHFA staff will perform an architectural review for compliance with the most recent Design and Architectural Standards (DAS). Without architectural Conditional Approval, the application will not secure a 42(m) Letter of Eligibility or seek OHFA Board approval, if required.

### (3) OHFA Multifamily Committee and Board Approval

All projects seeking a reservation of Housing Development Loan (HDL) resources and/or an inducement resolution/final resolution for OHFA-issued residential rental private activity bonds must seek and secure OHFA Multifamily Committee recommendation and Board approval. The OHFA Multifamily Committee and Board monthly calendar can be found on the OHFA Board Website. Once scheduled for a specific month, the assigned OHFA analyst will work with the applicant to complete an Executive Summary, which provides summary information about the project to the OHFA Multifamily Committee and Board. Once complete, the Executive Summary will be posted to OHFA's BoardDocs Website. Applicants are encouraged to attend the Multifamily Committee and Board meeting either in person or virtually at which the project is to be presented.

### (4) 42(m) Letter of Eligibility and Transitioning to Project Administration

Following underwriting, threshold, and architectural conditional approval, OHFA will execute a 42(m) Letter of Eligibility with the LIHTC ownership entity.

Once developments have a signed 42(m) Letter of Eligibility, the project will be transitioned to a Project Administration analyst. The assigned analyst will guide the development team through the construction, draw, 8609 and closeout process. Requirements are posted on the OHFA Project Administration webpage.

## Construction Completion and Project Operations

### Compliance

Completion of the Compliance Next Steps (CNS) meeting is required for all properties as they transition from the Agency's Development office to the Office of Program Compliance. If not completed, the issuance of Form 8609 will be delayed. The Compliance Next Steps Process webpage contains the most current information on the CNS meeting, including scheduling information and required forms and documents.

Compliance Monitoring requirements can be found on the Compliance Policies page of the OHFA website. OHFA encourages all owners and managers to stay informed by taking advantage of free training opportunities so that owners and management companies are fully compliant with all requirements.

### Asset Management

All LIHTC projects must submit annual, independently-prepared audited financial statements throughout the 15-year Compliance Period. During the Extended Use Period, projects with 50 or more units will continue to submit independently-prepared audited financial statements; projects with less than 50 units will submit independently-prepared reviewed financial statements. OHFA may request additional information.

For more information, visit OHFA's Asset Management website here.

# E. Threshold Requirements

## Rent and Income Restrictions

All LIHTC proposals must select one of three federally-mandated Minimum Set Asides as referenced in 26 U.S.C. §42(g) and listed below:

(1) 20-50 Set Aside:

At least 20% of the residential units must be both rent restricted and occupied by households at or below 50% of the Area Median Income (AMI).

(2) 40-60 Set Aside:

At least 40% of the residential units must be both rent restricted and occupied by households at or below 60% AMI.

(3) Average Income:

At least 40% of the residential units must be both rent restricted and occupied by households that do not exceed the imputed income limitation of the respective unit so long as the average of the imputed income limitations does not exceed 60% AMI. Imputed income limits can range from 20% to 80% AMI in 10% increments. Please see OHFA's Average Income Policy for more details.

## Broadband Infrastructure

All developments must install wireless broadband infrastructure in compliance with Federal Register 81 FR 31181 "Narrowing the Digital Divide through Installation of Broadband Infrastructure". Installation must result in speeds in each unit (living or dining room and each bedroom) and all common areas meeting the Federal Communications Commission's definition in effect at the time of generating the pre-construction estimates. Owners are not required to pay for tenants' service but must provide free access in all common areas (exclusive of circulation space) through the Extended Use Period (does not apply to developments in areas that lack broadband service).

## Compliance with Other OHFA Policy Documents

Except as specifically waived or modified in these Guidelines, applications must comply with the following Agency Guidelines:

- Most recently-published Underwriting Guidelines
- Most recently-published Design and Architectural Standards
- Most recently-published Housing Development Loan Program Guidelines, if seeking HDL

## Cost Containment

At least once annually, OHFA will post the maximum total development cost (TDC) limitation for 4% LIHTC applications. Applicants will be required to meet the Cost Containment standards. Applicants must use the TDC/Unit and TDC/GSF caps that most closely aligns with their project type. OHFA will evaluate projects to ensure compliance at Final Application and at 8609 submission. Projects that do not demonstrate compliance with the caps will be removed from consideration. Applicants must submit an Underwriting Exception Request if Cost Containment standards are exceeded.

## Detrimental Land Uses

OHFA will not select new construction or adaptive reuse applications for developments sited adjacent to any detrimental land use or sufficiently close to impair residents' use. Detrimental land uses include:

- significant numbers of uncontrolled blighted parcels (Blighted as defined in the Ohio Revised Code §1.08)
- high levels of noise and/or noxious odors
- land uses incompatible with residential occupancy (e.g., landfills, factory farming, etc.)
- others as determined by OHFA.

Applicants may submit the following supplemental information to respond to a finding of detrimental land use with the proposal application and/or following the site visit:

- a narrative explaining plans or strategies to mitigate or eliminate the adjacent conditions prior to the property being placed into service.
- if the site(s) are under third party control, documentation from the owner confirming the remedial plans and estimated completion time.
- if the site(s) are under land bank control and scheduled for demolition or renovation, documentation from the land bank confirming of its corrective plan.

## Developer Fee Limit

### Maximum Budgeted Developer Fee

The maximum budgeted developer for the 4% LIHTC program is 20% of the project's LIHTC eligible basis net of the Developer Fee calculation below:

Developer Fee is calculated as the sum of the following fees:

- Developer Fee
- Application/development consultant fees
- Construction management fees
- Guarantee fees
- Developer-charged financing fees
- Developer-charged asset management fees

## Exception Requests

OHFA will accept Exception Requests as outlined in the most recently-published Underwriting Guidelines, most recently-published Design and Architectural Standards, and those outlined specifically in these Guidelines. Applicants must submit Programmatic Exception Requests with the Pre-Application as outlined in the Program Calendar. Underwriting and Design Exception Requests are submitted with the Final Application. Each individual Exception Requests must be submitted on its own Exception Request Form, which will be made available with other application materials in accordance with the Program Calendar.

## Extended Use Agreement

All LIHTC developments will record a Restrictive Covenant provided by OHFA which waives the right of the owner to petition OHFA to have the extended use period terminated as described in Section 42 of the IRC.

## Fraud, Waste, and Abuse

Documented instances of fraud, waste, or abuse may result in any action listed in the Penalties section herein and/or any other action OHFA deems necessary.

## Eligible Basis Boost

(1) Codified Basis Boost

In accordance with 26 U.S.C. §42(d)(5)(B), buildings located in Qualified Census Tracts (QCTs) or Difficult Development Areas (DDAs) are statutorily eligible for an increase in eligible basis of up to 130%. Such designations are typically determined by HUD in October of the prior year in which such buildings are eligible. To determine if a building is located in a QCT or DDA, visit HUD's Office of Policy Development and Research (PD&R) Web site here.

(2) Discretionary Basis Boost

In accordance with 26 U.S.C. §42(d)(5)(B)(v), state housing credit agencies are federally prohibited from offering a discretionary basis boost for 4% LIHTC projects.

## Penalties

Violations of the QAP, missed deadlines, failure to honor commitments made in the application process, or other instances of noncompliance with OHFA requirements may result in any or all of the following actions:

- Reduction in the number of applications an entity may submit or awards an entity may receive in future funding cycles.
- Removal from application consideration (if during current application round).
- Cancellation or reduction of an award.
- Prohibition from participation in OHFA funding programs.
- Permanent or temporary prohibition from participation in one or more OHFA programs.
- Removal from a position of Good Standing for a period of one year or more, resulting in permanent or temporary prohibition from participation in all OHFA programs.
- Monetary fee in an amount determined by OHFA.
- Reduction in the developer fee in an amount determined by OHFA.
- Referral for independent cost audit (commissioned by OHFA but paid for by the owner/developer).
- Additional physical inspection/site visit at the applicant's cost.

## Related-Party Acquisitions

If a proposed project includes acquisition costs stemming from the purchase of land and/or buildings owned by a related party of the development team, the applicant must submit documentation demonstrating adherence to the following conditions:

- The maximum seller note amount may be sized at the purchase price or appraised value, whichever is lower.
- No consideration to a related-party seller (cash out to seller) is permitted. Cash out to seller is calculated as follows:

| |
|---|
| Cash out to seller = as-is restricted appraised value of the property – payoff of debt from unrelated parties – seller note |

To demonstrate compliance with OHFA's prohibition on cash out to seller, applicants must provide the following information at Final Application:

- The most recent audited financial statements of the property to be acquired,
- Current and projected balances on existing debt as of the estimated financial closing date; and
- Current and projected reserve balances as of the estimated financial closing date.

## Scattered Site Definition & Requirements

A development qualifies as scattered site if there are 10 or more sites and 50% or fewer are contiguous. Scattered site developments cannot include non-LIHTC/market rate units. Applicants must adhere to requirements in the Architectural Plans, Market Study, Public Notification, Site Visit Documents, and Scattered Site Development Map sections.

## Tenant Protections

The ownership entity and management agent will:

- expressly include reasonable accommodations in the application for tenancy;
- not ask applicants/residents for medical or other protected information unless and only to the extent legally necessary (e.g., processing reasonable accommodations);
- use standard leases with the same rights available to, and responsibilities expected of, all households, including duration of tenancy (cannot be transitional);
- ensure participation in any supportive services is entirely voluntary (not a formal or implied condition of occupancy); and
- not give a preference based on either disability type (actual or perceived) or being a client of a particular provider.

As an exception to the last item in listed above, projects may give preference to disabled families who need services offered in accordance with the following:

- The preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing.
- Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing and for whom such services cannot be provided in a nonsegregated setting.
- Residents will not be required to accept the particular services offered.
- The owner may advertise the project as offering services for a particular type of disability however the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided.

The application must include a letter representing the project will meet the criteria in this section from either a Continuum of Care or other public entity (e.g., Mental Health and Recovery system board, local child welfare system of care) which has no affiliation with any member of the Development Team.

The ownership entity's members/partners, the management agent, and affiliates thereof may not engage in medical, therapeutic, or other activities regulated by the U.S. Centers for Medicare & Medicaid Services with respect to the residents.

## Appendix A: Submission Requirements

### (1) Affordable Housing Financing Application (AHFA)

*When is this due?* Pre-Application ☐ **Final Application** ☒ 8609 ☐

Applicants must submit a completed AHFA, OHFA's proforma, designed specifically for the 4% LIHTC program, which will be posted with other application materials by the deadline indicated in the Program Calendar. Please note, OHFA will not accept applications that use the incorrect AHFA.

### (2) Appraisal

*When is this due?* Pre-Application ☐ **Final Application** ☒ 8609 ☐

Applications must include an as-is appraisal for all development site(s) which complies with all Appraisal Requirements in the most recently-published Underwriting Guidelines.

### (3) Architectural Plans and Design & Construction Features Form (DCFF)

*When is this due?* Pre-Application ☐ **Final Application** ☒ 8609 ☐

Applications must include architectural plans for all development site(s) in accordance with the most recently-published OHFA Design & Architectural Standards and a completed Design & Construction Features Form, including the Construction Certification. Architectural plans must be submitted both in 11" x 17" hard copy and electronically.

### (4) Authorization to Release Tax Information

*When is this due?* Pre-Application ☐ **Final Application** ☒ 8609 ☐

Final Applications must include a completed Authorization to Release Tax Information Form for the parent company of each member of the ownership entity and the parent company of the HDAP recipient.

### (5) Articles of Incorporation (Non-Profit Developers Only)

*When is this due?* Pre-Application ☐ **Final Application** ☒ 8609 ☐

Applications submitted by non-profit developers and/or co-developers must include the organizational articles of incorporation evidencing 501(c)(3) or 501(c)(4) status.

### (6) Audited Financial Statements for Existing Properties (Preserved Affordability Only)

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

Preserved Affordability applications must include the most recent two years of audited financial statements for the project.

### (7) Conditional Financial Commitments

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

Conditional financial commitments must be evidenced by a letter from the funding entity stating the following:

- loan or grant amount.
- loan term and amortization schedule/term (and/or payment requirements).
- interest rate.
- fees associated with the loan or grant.
- reserve requirements; and
- lien position of the loan.

The applicant must provide supporting documentation detailing the terms and conditions of any assumed or restructured debt including the current outstanding balance.

Commitment letters are required for Capital Contributions, Deferred Developer Fee, Equity and Seller Financing.

### (8) Condominimized Space Description

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

If any portion of the development will be condominimized, the application must include a draft of the governing agreement that details costs and maintenance of common space, parking availability, air rights, default remedies, commercial uses, and tenant selection.

### (9) Development Team Consultant Statement

*When is this due?* **Pre-Application** X   Final Application ☐   8609 ☐

The application must include a statement regarding any development consultant(s) describing:

- their role in the project.
- scope of their authority to negotiate for and bind the development team; and
- a summary of all projects they are currently advising and the scope of those agreements.

For the purposes of this section, development consultants include any person or entity providing professional advice or assistance with the preparation of an application to the LIHTC program, but do not include syndicators.

Consultants may not serve as the primary point of contact for OHFA or as the Project Manager as listed on the Development Tab of the AHFA.

### (10) Development Team Experience and Capacity Review

*When is this due?* **Pre-Application** X   **Final Application** X   8609 ☐

OHFA will evaluate the experience and capacity of the development team, including general partners, managing members, developers, co-developers, and management companies at Pre-Application.

For each Developer and Co-Developer:

- A list of projects currently in the development process

For each Developer and Co-Developer (if applicable) or when single-purpose entities are created, the Parent Member of each Developer and Co-Developer (if applicable), and Parent Member of the General Partner/Managing Member:

- An organizational chart
- Biographies for all staff members
- A real estate owned (REO) schedule detailing the Debt Coverage Ratio or Income to Expense Ratio for all existing LIHTC projects for which the parent entity of any general partner/managing member of the proposed project maintains an ownership interest, with a narrative detailing the circumstances for any DCR or Income to Expense Ratio below 1.0
- A current (within 30 days of pre-application and final application submission) Lien and Litigation report. For lien reports, include the county where the project is located and the state of Ohio. For litigation reports, include Ohio courts and any federal court.

Applicants must disclose changes to any development team between the pre-application and Final Application. OHFA may disqualify applications that do not maintain the core competency and experience necessary to successfully develop and manage a project.

Appendix B: Experience & Capacity Characteristics outlines the minimum eligibility and evaluation criteria. Consultants may not be the only source of team experience.

### (11) Evidence of Site Control

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

The application must comply with the following. Any updates to site control documents must be submitted with the final application. All forms of site control may not expire within six months of the Final Application.

a. Related Party: If a related party of the ownership entity currently owns the real estate, copies of the executed and recorded deed(s) and an executed purchase or ground lease contract
b. Arm's-Length: If the current owner is not a related party of the ownership entity, then:
    i. a purchase contract or option.
    ii. a ground lease contract or option; or
    iii. documentation from the local government/land bank regarding the transfer of property.
        1. If parcels will be acquired from a city land bank a copy of the final city council resolution, city council ordinance, letter from a board of control or designated official, or contingent purchase agreement approving the legal description and transfer of all applicable sites.
        2. If parcels will be acquired from a county land bank a letter from the board of control or a designated official approving the transfer of all applicable sites.
c. Ground Lease: Any ground lease must be for a minimum term of 35 years. Evidence of site control may not expire until a reasonable period following the anticipated closing date.
d. Scattered Site Developments: Scattered site developments must have 100% of the sites under control at the time of Final Application.

### (12) Exception Requests

*When is this due?* **Pre-Application** [X] **Final Application** [X] 8609 [ ]

OHFA will consider exceptions only for those items specifically allowed under these Guidelines and represented in the Exception Request Form. Any response issued applies exclusively to the year in which the application was submitted and cannot be used for future applications. Programmatic Exception Requests are due at Pre-Application while all other Exception Requests are due at Final Application.

### (13) Federal Tax Identification Number

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

The application must include the ownership entity's Federal Tax Identification Number.

### (14) Green Certification

*When is this due?* Pre-Application [ ] Final Application [ ] **8609** [X]

a. All multifamily developments must obtain one of the energy efficiency or green building certifications outlined in OHFA's most recently-approved Design and Architectural Standards. Additionally, applicants proposing New Construction developments must obtain one of the following energy efficiency or green building certifications:
   i. 2020 Enterprise Green Communities
   ii. Leadership in Energy & Environmental Design (LEED) – silver or higher
   iii. ICC 700 National Green Building Standard (NGBS) – silver or higher

b. Rehabilitation and adaptive reuse projects unable to obtain one of the above certifications may use the OHFA Limited Scope Rehabilitation Sustainability Standards as an alternative. Projects selecting this option must also demonstrate:
   i. meeting or exceeding the higher of either the Overlay criteria or the current Ohio adopted standard; and
   ii. post-construction blower door test 150% improvement over the pre-rehabilitation test, up to 12 ACH.

The request for IRS Form 8609 must include evidence of final certification from a HERS rater, green building certification organization, or otherwise qualified and licensed professional as approved by OHFA.

### (15) LIHTC Lease Addendum

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

The application must include a written statement from the owner certifying use of the LIHTC Lease Addendum (other than units under a HUD model or USDA model lease).

### (16) Limited Partnership Agreement

*When is this due?* Pre-Application [ ] Final Application [ ] **8609** [X]

Applicants must submit a copy of the Limited Partnership Agreement or Operating Agreement for the ownership entity detailing the roles and responsibilities of each partner or entity at request for IRS Form 8609.

**(17) Market Study**

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

Applications must include a market study conducted by an OHFA-approved market study professional updated or approved within 12 months of the application submission date. Refer to the most recently-published Multifamily Underwriting Guidelines for OHFA's market study requirements. The rent and income restriction breakdown must match those referenced in the submitted AHFA. If any changes occur between the rent and income restriction breakdown, the market study must be updated.

All multi-site developments must be within the boundaries of a single Primary Market Area (PMA) other than the following exceptions:

- The market analyst determined that an entire county constitutes a single PMA.
- Scattered site Service Enriched developments that span multiple submarket areas if the Primary or Secondary Priority Letter specifies how supportive services will be provided in a manner that is accessible to all residents despite being geographically dispersed.
- Applicants seeking to combine multiple existing developments into one project for financing purposes with an explanation of the Sponsor and Management Agent's capacity to continue operating these properties under a single financing structure (may include documentation from other government entities giving permission to combine projects).

**(18) Multifamily Bond Financing Information**

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

For OHFA issued bonds, the Final Application must include a letter from the bond underwriter (if publicly offered) or the bond purchaser (if privately placed) detailing the following:

- the bond financing structure,
- cost of bond issuance and terms,
- calendar outlining anticipated actions,
- responsible parties for closing the transaction, and
- the timeframe for approving OHFA-issued bonds (dates for inducement and final approval).

For non-OHFA issued bonds, an inducement resolution or final bond resolution must be submitted by the bond-issuing entity detailing the anticipated bond amount and the expiration date. Additionally, a letter from the bond underwriter (if publicly offered) or bond purchaser (if privately placed) must be provided detailing the following:

- the bond financing structure,
- cost of bond issuance and terms,
- calendar outlining anticipated actions,
- responsible parties for closing the transaction, and
- the timeframe for seeking a final bond resolution, if not already secured.

**(19) Notification to Accessibility Groups (newly affordable units only)**

| *When is this due?* | Pre-Application | | **Final Application** | **X** | 8609 | |
|---|---|---|---|---|---|---|

Applicants proposing newly-affordable units must notify all accessibility groups in the county.

Applicants agree to accept referrals for prospective residents and consider design recommendations for the property. The application shall include copies of all correspondence between the applicant and accessibility groups.

If requested by an accessibility group, the applicant will provide the most current copy of the development's architectural plans prior to submitting the final application.

**(20) Ohio Housing Locator**

| *When is this due?* | Pre-Application | | Final Application | | **8609** | **X** |
|---|---|---|---|---|---|---|

Owners must list properties on the Ohio Housing Locator (or other equivalent substitute at OHFA's direction) and new construction on the Lead-Safe Rental Registry. Owners are responsible for keeping the property listings current.

**(21) Organizational Chart**

| *When is this due?* | Pre-Application | | **Final Application** | **X** | 8609 | |
|---|---|---|---|---|---|---|

Applications must include an Organizational Chart for the project ownership entity.

**(22) Phase I and II Environmental Site Assessments**

| *When is this due?* | Pre-Application | | **Final Application** | **X** | 8609 | |
|---|---|---|---|---|---|---|

Applications must include a Phase I Environmental Site Assessment (ESA) for all sites dated no later than six months prior to the Application deadline completed in accordance with the most current ASTM Standard and include the following non-scope considerations: Mold; Asbestos-containing building materials; Radon; Lead-based paint; Lead-in-drinking-water; and Wetlands. In addition, a Phase II ESA and/or additional testing must be submitted if recommended in the Phase I ESA.

OHFA must be identified as an intended user.

OHFA may reject any sites indicated to have environmental problems or hazards.

**(23) Physical Capital Needs Assessment (rehabilitation or adaptive reuse only)**

*When is this due?* Pre-Application [ ] **Final Application [X]** 8609 [ ]

Applications for the rehabilitation of existing housing units and adaptive reuse must include a Physical Capital Needs Assessment (PCNA). The PCNA must reflect current building conditions, conform to the standards in the most recently-published Multifamily Underwriting Guidelines and most recently-published Design and Architectural Standards.

OHFA will use the PCNA and AHFA to determine if the project meets the threshold requirement of substantial rehabilitation.

**(24) Prior OHFA Funding Documents**

*When is this due?* Pre-Application [ ] **Final Application [X]** 8609 [ ]

Projects previously funded with OHFA resources, including LIHTC, HDAP, and/or MLP must provide copies of all legal documents and amendments associated with OHFA funding, including, but not limited to, the following:

- LIHTC restrictive covenant(s)
- HDAP restrictive covenant(s)
- HDAP mortgage(s)
- HDAP note(s)
- HDAP Funding Agreement(s)
- HDAP loan agreement(s)
- MLP mortgage(s)
- MLP note(s)

**(25) Project Summary (.PDF format)**

*When is this due?* Pre-Application [ ] **Final Application [X]** 8609 [ ]

The Application must include a copy of the AHFA Project Summary tab. Please note, OHFA posts the Proposal Summary on its Pending Applications and Funded Projects website upon submission of an Application and may be shared with other interested parties, if requested.

### (26) Public Notification (All Projects)

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

In accordance with 26 U.S.C. §42(m)(1)(A)(ii) and O.R.C. §175.07, at Application, the applicant must include evidence of completing the public notification process using the OHFA template letter, and the notification must include all information requested, be in writing, and be sent via certified mail, return receipt requested. Applicants must submit a copy of the stamped post office receipt, return receipt not required, for certified mail and copies of notification letters with the application. The name and address of the officials must be on the return receipts. Public notification must be submitted to the following individuals:

- The chief executive officer and the clerk of the legislative body of any municipal corporation in which the project is proposed to be constructed or that is within one-half mile of the project's boundaries.
- The clerk of any township in which the project is proposed to be constructed or that is within one-half mile of the project's boundaries; and
- The clerk of the board of county commissioners of any county in which the project is proposed to be constructed or that is within one-half mile of the project's boundaries.

Updated evidence of completing the public notification process must be provided if there are any changes to the information listed on the OHFA template letter.

### (27) Related Party Transaction Questionnaire

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

Applications must include the Related Party Transaction Questionnaire for any transactions between related parties.

### (28) Relocation Plan (existing rental units only)

*When is this due?* Pre-Application [ ] **Final Application** [X] 8609 [ ]

Any development involving rehabilitation of occupied units that will result in permanent displacement must submit a complete Acquisition, Relocation, and Demolition Questionnaire and Relocation Assistance Plan. OHFA may prohibit, limit, or mitigate any permanent displacement.

If a development will result in resident relocation during the construction period, the application must include a narrative detailing the tenant relocation plan addressing the method(s) for relocating residents, provide a breakdown of any associated costs, and identify if tenants will be permanently displaced.

**(29) Rental Subsidy Contract**

*When is this due?* Pre-Application [ ] **Final Application [X]** 8609 [ ]

OHFA will only consider subsidy that is awarded to a specific project (project-based) by a third-party such as a public housing authority, the U.S. Department of Agriculture Rural Development (USDA) or other entity. If the public housing authority is part of the development team, the third-party requirement is waived. All rental subsidy contracts or commitments must include the number of units and bedroom types with rents matching those being assumed in the AHFA.

For existing Section 8 Housing Assistance Payment (HAP) contracts, the application must include the following:

- Original HAP contract
- The most recent renewal contract (if applicable)
- The current rent schedules
- For applications in which the development team is seeking an Option 1: Mark-Up-To-Market Renewal, the Application must include the rent comparability study (RCS) submitted to HUD with documentation evidencing that HUD has received such RCS for review.

For projects seeking to utilize the HUD Rental Assistance Demonstration (RAD) program under Components 1 or 2 must have a Commitment to Enter into a Housing Assistance Payments (CHAP).

For all other forms of project-based rental assistance, the following information is required

- The number of units per bedroom size that will receive rent subsidies;
- The amount of rent subsidy that will be provided for each unit;
- Utility allowances for each unit type;
- If the subsidy will increase as rents increase;
- The history of success in receiving the rent subsidies;
- Statement of understanding that there is a 30-year rent restriction associated with the LIHTC; and
- How long the subsidy will be provided

**(30) Scattered Site Development Map**

*When is this due?* Pre-Application [ ] **Final Application [X]** 8609 [ ]

Any application with 10 or more sites, 50% or fewer of which are contiguous, must provide a detailed map clearly identifying the location of all buildings and parcels considered for the application.

**(31) Scope of Work** (Rehabilitation or Adaptive Reuse Only)

*When is this due?* Pre-Application [ ] **Final Application [X]** **8609 [X]**

At Final Application, and 8609, applicants must submit a complete Scope of Work Form for rehabilitation and adaptive reuse projects.

**(32) Site Visit Documents**

*When is this due?* Pre-Application ☐ **Final Application** ☒ 8609 ☐

OHFA may conduct a site review at Final Application submission and may deem the site unsuitable.

Applications must include:

- a detailed aerial map clearly depicting the physical location of the site, the nearest intersection, and all roads leading to the site; and
- photos of the site and surrounding properties.

**(33) Supportive Services Plan & Providers**

*When is this due?* Pre-Application ☐ **Final Application** ☒ **8609** ☒

At Final Application:

For projects that propose providing supportive services (including Service-Enriched Housing applications), the applicant must provide a narrative detailing the specific services to be provided, the proposed service provider(s), its (their) history providing such services, and a budget.

At 8609 Submission:

For Service-Enriched housing developments, Supportive Services Plans (SSP) are due no later than the request for IRS Form 8609. Applications or requests for Form 8609 must include evidence of salaried or in-kind service coordination on-site, contiguous, or accessible to the development and linkages to information and resources appropriate to the population. All service coordinators must have a history of serving the targeted area or population.

**(34) Utility Allowance Information**

*When is this due?* Pre-Application ☐ **Final Application** ☒ 8609 ☐

Applications must include a utility allowance projection determined using any permissible or reliable calculation method consistent with OHFA's Utility Allowance Request Procedure. Please note that OHFA does not approve utility allowances until a project has been placed in service.

**(35) Zoning**

*When is this due?* Pre-Application ☐ Final Application ☒ 8609 ☐

Applications must include either:

- a valid building permit
- a letter from the local municipality stating that either the current zoning will permit the proposed development, or no zoning regulations are in effect.

Evidence must be dated within one year of the Application deadline as referenced in the Program Calendar.

# Appendix B: Experience and Capacity Standards

### Developer Experience

The lead developer or co-developer as represented in the Affordable Housing Funding Application (AHFA) must have successful experience with the LIHTC program as demonstrated by one of the following minimum standards:

- At least one 4% LIHTC project has been placed in service in Ohio within the past 10 years; or
- At least one 4% LIHTC projects have been placed in service in other states within the past 10 years.

### New Developers and/or General Partners

Developers that have not previously worked with OHFA will be limited to one reservation of LIHTC. Such developers will not be able to apply for additional awards of LIHTC until the first project has been successfully completed and received its 8609 forms.

### Disqualifying Developer and Owner Characteristics

Any member of the development team or ownership that has (1) failed to pay any fee or expense due to OHFA, (2) been in default or in major non-compliance with any OHFA program, (3) been debarred or suspended from any OHFA, HUD, or Rural Housing programs, (4) is currently in foreclosure or been foreclosed, or (5) is under felony investigation, indicted or been convicted of a felony, may not participate in the program until the event or events are corrected or resolved. OHFA may contact other local, state, and/or federal housing agencies to solicit feedback related to a specific developer or development team member.

Any member of the development team or ownership that is federally debarred may not participate in the program. OHFA will confirm through the System for Award Management (SAM) website that no member of the development team has been debarred or suspended from doing business with the federal government.

OHFA may pull business credit reports on any or all members of the development team to determine if outstanding liens or judgements exist, depending on the results provided in the Lien and Litigation Reports.

Developer and/or owners who have received an award of HDAP in Program Year 2021 or earlier and have not yet closed with OHFA's Legal Office on the HDAP award may not participate in the program.

### Financial Capacity

OHFA will review the financial capacity of the developer and co-developer (if applicable), and each parent member of the General Partner/Managing Member associated with a submitted application. OHFA requires the most recently-available three years of audited financial statements for such organizations associated with a proposed project and a real estate owned (REO) schedule for all existing projects for which the lead developer and co-developer (if applicable) maintain an ownership interest. OHFA will review the following three metrics:

- Net worth
- Current ratio (current assets ÷ current liabilities)
- Portfolio risk as defined by any projects in identified in an REO schedule with a debt service coverage ratio or income to expense ratio at or below 1.0.