

## DEFINITIONS

For the purposes of the Manual, the Fund has defined the following capitalized terms:

- **Adjusted Basis** – the cost basis of a building adjusted for capital improvements minus depreciation allowable
- **Allocation Certification** – IRS Form 8609
- **Applicant or Ownership Entity or Owner** – the Credit applicant which will own the LIHTCP property (e.g. ABC Apartments Limited Partnership is the Ownership Entity of ABC Apartments)
- **Business Day** – any day in which normal business operations are conducted. This is generally considered to be Monday through Friday and excludes weekends and public holidays observed by the Fund.
- **the Chief Executive Officer of the Local Jurisdiction** – normally the mayor if the property is located within the boundaries of a municipality or the President of the County Commission if it is not
- **the Code** – the Internal Revenue Code of 1986, as amended
- **Compliance Period** (also referred to as the initial 15-year Compliance Period) – the period of 15 taxable years beginning with the 1st taxable year of the Credit Period
- **Credit Period** – the period of 10 taxable years beginning with (1) the taxable year in which a building is placed in service, or (2) at the election of the Owner, the succeeding taxable year
- **Credit(s)** – Low-Income Housing Tax Credit(s)
- **Eligible Basis** – a component of the Qualified Basis of an LIHTCP property. It is generally equal to Adjusted Basis of the building, excluding land but including amenities and common areas.
- **ESOP (employee stock ownership plan)** – a Code Subsection 401(a) qualified defined contribution plan that is a stock bonus plan or a stock bonus/money purchase plan. An ESOP must be designed to invest primarily in qualifying employer securities as defined by Code Subsection 4975(e)(8) and meet certain requirements of the Code and regulations

- **Existing Housing** – a property which is comprised solely of currently inhabited residential rental units, whether low-income (tenants with annual incomes at or below 80 percent of the area median gross income) or market rate
- **Existing Low-Income Housing** – a property which is comprised of currently inhabited low-income (tenants with annual incomes at or below 80 percent of the area median gross income or less) residential rental units
- **Extended Use Period** – the period beginning on the first day of the Compliance Period and ending on the later of (1) the date set forth in the Regulatory and Restrictive Covenants for Land Use Agreement related to the property, between the Owner and the Fund, and prepared in accordance with Section 42(h)(6)(B) of the Code (WVHDF LIHTCP-7 or LIHTCP-8), or (2) the date which is 15 years after the close of the Compliance Period
- **the Fund** – the West Virginia Housing Development Fund
- **General Partner** – general partner of a limited partnership Owner

**References to General Partner also refers to managing member and member owner(s) of a limited liability company Owner.**

- **HOME Program** – HOME Investment Partnerships Program
- **HTF Program – National Housing Trust Fund Program**
- **HUD** – U.S. Department of Housing and Urban Development
- **Income Approach** – a valuation method used for real estate appraisals that is calculated by dividing the capitalization rate by the net operating income of the rental payments
- **IRS** – Internal Revenue Service
- **Long-Term Lease** – a land lease of no less than 30 years, in which (1) the lessor agrees to be a party to the Regulatory and Restrictive Covenants for Land Use Agreement (the “Restrictive Covenants”), (2) the lease terms provide that the Restrictive Covenants survive termination of the lease, and (3) the lease terms contain any other provisions required by the Fund
- **LIHTCP** – Low-Income Housing Tax Credit Program
- **the Manual** – the current Tax Credit Manual
- **New Supply** – a property which will directly result in a direct increase of the stock of low-income residential rental units

- **Ownership Entity or Owner or Applicant** – the Credit applicant which will own the LIHTCP property (e.g. ABC Apartments Limited Partnership is the Ownership Entity of ABC Apartments)
- **Non-Controlling Member/Partner** – any person who does not own controlling interest, as evidenced by organizational documents, in a for-profit entity
- **Partnership Agreement** – agreement of limited partnership of a limited partnership Owner

**References to Partnership Agreement also reference operating agreement of a limited liability company Owner.**

- **the Plan** – the current Allocation Plan
- **Principal** – any person who owns ~~ana~~ controlling interest, as evidenced by organizational documents, in a for-profit entity [a non-controlling member/partner does not qualify for points eligibility for scoring criteria such as Developer Experience, Timely Delivery of Units, etc.]; the directors, managing directors, and officers of an entity which is wholly ESOP-owned; the trustees of a Trust; and the Executive Director and Deputy Director, President and Vice-President, or Chair and Vice-Chair (or comparable officers) of a non-profit organization. The Fund does not define a Secretary or Treasurer or Board Member as a principal of a non-profit organization.
- **Program Calendar** – Exhibit A to the Manual which contains various deadlines related to the State’s LIHTCP
- **Property Architect** – the architect of record whose seal is stamped on the property plans and specifications
- **Property Contractor** – the person who holds the contractor’s license or the contractor’s authorized representative who is (will be) listed as the contractor’s representative in the executed construction contract and is (will be) responsible for oversight of the construction or rehabilitation of the property
- **Qualified Basis** – the base that is multiplied by the applicable percentage to determine the annual Credit. The Qualified Basis equals the applicable fraction times the Eligible Basis.
- **Reachable Green Space** – an area or areas of grass, Landscaping, or other vegetation which (post-construction) will be reasonably reachable by the tenants of the property (e.g., green space at the bottom of an unusable (slope of 20% or greater) hill, which cannot be accessed by any other reasonable route, will not count as green space). It does not include buildings, porches, sidewalks, curbs, or parking areas, etc. The Fund ~~alsomay~~ considers playgrounds and other outdoor

community/activity space amenities as green space. However, in order for such areas to be considered green space, such areas must be deemed by the Fund as acceptable green space. Slopes of greater than an 8% grade must provide either handrailing and/or stairs to access green space.

- **Reservation Request** – the initial complete application stage for any property applying for Credits, preceded only by pre-registration
- **RD** – United States Department of Agriculture Office of Rural Development
- **Sales Comparison Approach** – a valuation method used for real estate appraisals that is calculated based upon recent sales of comparable properties in the area
- **Scattered Site Property** – a property which includes non-contiguous parcels which (post-construction) will contain residential rental units. (See the description of a permissible Scattered Site Property in the Allocation Policies, Definition of “Property” section of the Manual.)
- **Selection Decision Letter** – letter sent from the Fund notifying an Applicant (1) the property has been selected to receive Credits or (2) the property has not been selected to receive Credits, but may choose to be wait-listed
- **State** – State of West Virginia
- **SHPO** – State Historic Preservation Office
- **State Housing Credit Ceiling** – the aggregate housing credit dollar amount which the Fund may allocate in a given year
- **Tax-Exempt Bond Financed Property** – a property which does not require a Credit allocation from the State Housing Credit Ceiling due to meeting or exceeding the required percentage (currently 50 percent or more) of the property’s aggregate basis being financed by tax-exempt bonds which are subject to the State’s bond volume cap.
- **Trust** – an arrangement whereby a person (a trustee) holds property as its nominal owner for the good of one or more beneficiaries

## GENERAL

**The Manual provides guidance on the administrative process of obtaining Credits through the Fund and certain other guidance regarding the Fund’s LIHTCP. Compliance with the Manual does not guarantee any investor in an LIHTCP property the ability to take Credits. Investors may be denied Credits, or the Credits may be recaptured by the IRS, despite approval of**

the Credits by the Fund, or the benefits of the Credits may be mitigated by special rules such as at-risk limitations, the alternative minimum tax, or recapture. Investors should consult with their tax advisors to ensure their ability to benefit from Credits prior to their investment.

## **STREAMLINED APPLICATION PROCESS FOR FUND FINANCING COMBINED WITH LOW-INCOME HOUSING TAX CREDITS**

In an effort to streamline the application process for LIHTCP properties also requesting permanent financing from the Fund (e.g. HOME Program, Multi-Family Loan Program with or without an RD 538 or HUD/FHA guarantee/insurance, HTF Program, [ERA2 Housing Fund](#), etc.), the Fund has combined the application process for Fund financing with the Reservation Request. Note: The Plan and the Manual do not override or supersede the program-specific guidelines as administered by the applicable Fund program departments and/or the applicable program-specific federal regulations for the permanent financing sought.

## **CONSOLIDATED APPROPRIATIONS ACT OF 2018**

Currently, the Fund ~~is considering~~ ~~has decided to not implement~~ the “income-averaging” provision of the Consolidated Appropriations Act of 2018 ~~based upon a desire to delay implementation until further guidance is provided by the IRS, but has not yet decided to implement the provision.~~ If this determination changes, and the Fund decides to implement the “income-averaging” provision, prior to the start of the 2024 application period, the Fund will provide an update on the Fund website ([www.wvhdf.com](http://www.wvhdf.com)), will email information to the Fund LIHTCP mailing list, and provide updated application forms which will accommodate the new provision.

## **ACCEPTABILITY OF DIGITAL/ELECTRONIC SIGNATURES**

A graphic image of a signature placed on a document using secure software that verifies the identity of the signer (e.g. Adobe Acrobat, DocuSign) will be considered by the Fund to be an acceptable digital/electronic signature. A typewritten name, regardless of font, that has not been verified by secure software will not be considered acceptable by the Fund.

## **REQUIREMENTS FOR REQUESTS AND TIME-SENSITIVE DEADLINES**

*All of the provisions of the Requirements for Requests and Time-Sensitive Deadlines section apply to Tax-Exempt Bond Financed Properties, except for references to the Carryover Allocation provisions.*

**Generally, unless otherwise stated, backup documentation which is older than six months will be considered stale and will be unacceptable.**

**Generally, unless otherwise stated, backup documentation that does not consist of a complete document will not be acceptable. Anytime documents are to be included with an LIHTCP application, the entire document must be provided to the Fund. Partial documents and summaries of documents are not acceptable and will be rejected for acceptability purposes.**

Each Applicant must submit documentation evidencing that the property satisfies all of the applicable requirements for a request (Reservation, Carryover Allocation, and Allocation). A summary of the requirements for each type of request is provided below. **A Summary of Attachments (WVHDF Form LIHTCP-E) should be utilized by Applicants in connection with their preparation and submission of requests.**

The Fund offers pre-application assistance as time allows prior to the Reservation Request due date. However, in conjunction with reviewing a property's Reservation Request, the Fund will only review and consider those items which are uploaded to the property's Procorem WorkCenter. Items submitted during pre-application assistance review are not considered part of a property's Reservation Request and are not reviewed in conjunction with determining whether a property has met minimum requirements for a particular type of request or for determining whether a property is awarded points for selection and preference criteria. It is the Applicant's responsibility to ensure that all required documentation, whether acceptance or scoring related or any other documents, are uploaded to the property's Procorem WorkCenter.

Note: Instructions for uploading documents to the Procorem web portal are provided on the Fund website ([www.wvhdf.com](http://www.wvhdf.com)).

### Summary of Main Application and Processing Stages

- Pre-Registration – required notification to the Fund of an anticipated application for Credits
- Reservation Request – initial full application submission
- Carryover Allocation Request (not applicable to Tax-Exempt Bond Financed Properties) – second full application submission applicable to a selected property which results in issuance of such property's Carryover Allocation Certificate (WVHDF LIHTCP-3 or LIHTCP-3B)
- Prior to Equity Closing – partial updated application (related to cash flow) from which the Fund completes an additional underwriting directly preceding the property's equity closing
- Allocation Request – final full application submission after the property is placed in service which results in the issuance of IRS Form(s) 8609 to the Ownership Entity

## Pre-Registration

A Pre-Registration Form is a one-page or two-page document (two pages if the property involves Existing Low-Income Housing) that must be completed for each property for which an Applicant intends to apply for Credits, from within or outside of (Tax-Exempt Bond Financed Properties) the State Housing Credit Ceiling regardless of to which of the four set-aside categories the property is applying.

Due to the additional time needed for the Fund to review and tier rate pre-registered Existing Low-Income Housing properties, Pre-Registration Forms for those properties are due earlier than New Supply property pre-registrations. All Applicants must complete the Pre-Registration Form and submit it to the Fund by email, mail, fax, or hand-delivery on or before the Pre-Registration due dates listed in the Program Calendar.

Once the Pre-Registration final due date has passed, the following items cannot change:

- property location (city and county);
- what the property will consist of (Existing Low-Income Housing, New Supply, or both); and
- whether or not the property will be a Tax-Exempt Bond Financed Property.

## Reservation Requests

The Fund will accept and consider Reservation Requests during the application period listed in the Program Calendar. The Fund accepts Reservation Requests solely through the Procorem web portal. All Reservation Request documents must be uploaded to the Reservation Request subfolder in the property's Procorem WorkCenter, with the exception of the Initial Fee which must be submitted by check or wire transfer to the Fund by the end of the application period.

The requirements for Reservation Requests are as follows:

- The Applicant must submit
  - a complete current WVHDF Form 1040 in Excel format,
  - a completed and certified Quality of Housing section of the current WVHDF Form 1040 for each non-contiguous parcel which (post-construction) will contain residential rental units, and
  - an executed WVHDF Form 1040 signature page.
- The Applicant must submit the Initial Fee in the form and amount specified in the Processing Fee section of the Manual.
- The Applicant must submit, as applicable, the required documents evidencing eligibility to participate in the LIHTCP:

- Program Participants Eligibility Requirements Certification (WVHDF Form LIHTCP-G),
- LIHTCP Compliance Certification (Exhibit 1 to LIHTCP-G), and/or
- Resume of Housing Experience (Exhibit 2 to LIHTCP-G).

See the Program Participants Eligibility Requirements, Program Participants Eligibility Requirements Certification and Exhibits subsection of the Plan for details on who must submit which documents.

- The Applicant must submit, as applicable, the documents required by the Program Participants Eligibility Requirements, Minimum Credit Score and Fiscal Soundness subsection of the Plan:
  - Credit Check Authorization and Release Forms (WVHDF Form LIHTCP-I) or alternate documentation pre-approved by the Fund and,
  - the non-profit organization’s three most recent years of audited financial statements. See the above-referenced section of the Plan for a definition of what the Fund considers the “three most recent years”.
- For a property applying to either the Qualified Non-Profit Set-Aside Category, the Existing Low-Income Housing Set-Aside Category, or the Top Off Set-Aside Category, the Applicant must submit documentation evidencing that the property satisfies the features and characteristics of the Applicant-selected set-aside category, as follows:
  - A property applying to the Qualified Non-Profit Set-Aside Category must submit documentation evidencing that it fulfills each of the bulleted items listed in the Set-Aside Categories subsection of the Plan relating to qualification to apply to the set-aside category.
  - A property applying to the Existing Low-Income Housing Set-Aside Category must submit a current rent roll which includes, but is not limited to the following unit-level items:
    - Number of bedrooms – list must include occupied and vacant units,
    - Number in household,
    - Household income,
    - Tenant paid rent, and
    - Utility allowance.
  - A property applying to the Top Off Set-Aside Category must submit an explanation satisfactory to the Fund of the reasoning for the request for additional Credit.
- The Applicant must submit one of the following to evidence site control of the property: a recorded deed, an option, a purchase contract, an option to enter into a Long-Term Lease, or a Long-Term Lease **in the name of the Ownership Entity for the subject property**. If a property applies to the Top Off Set-Aside Category, and the site control is not yet established in a recorded deed or Long-Term Lease, the Applicant must also submit documentation evidencing that continual site control has been maintained from the site control submitted in the



year the property received its initial Carryover Allocation Certificate, including copies of checks if required to extend site control.

- The Applicant must submit a Compliance Monitoring Training Certification (WVHDF Form LIHTCP-F).
- The Applicant must submit a Fair Housing and Americans with Disabilities Act Training Commitment Certification (WVHDF Form LIHTCP-Q).
- For any property that involves substantial rehabilitation (including gut rehabilitation and/or adaptive reuse), the Applicant must submit a **professionally-prepared** and **independent** capital needs assessment **addressed to and prepared for** the Fund, **including a costing of the capital needs identified**.

*If a property applies to the Top Off Set-Aside Category, a capital needs assessment does not need to be submitted.*

The capital needs assessment must include the following:

- a site visit and physical inspection of the interior and exterior of units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs/improvements, pending repairs, and existing or chronic physical deficiencies.
- an evaluation of the presence of environmental hazards, such as asbestos, lead paint, and mold, on the site.
- an opinion as to the proposed budget for recommended improvements and identification of critical building systems or components that have reached or exceeded their expected useful lives.
- a projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance expenses, to determine the appropriate replacement reserve deposits on a per unit per year basis.
- an examination and evaluation of the following:
  - Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, and gas and electric utilities and lines;
  - Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage;

- Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors;
- Mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, and elevators;
- Potential improvements to energy efficiency, including higher-rated HVAC equipment, specification of energy efficient windows and doors, minimum insulation standards, appliance upgrades, lighting improvements, and enhanced ventilation;
- Strategies for conservation of resources during rehabilitation, including use of durable and low-maintenance building materials, water-conserving plumbing fixtures and appliances, and drought-tolerant and low-maintenance landscaping; and
- Necessary improvements to physical accessibility for compliance with, as applicable, the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, etc.

**It is highly recommended that the applicant utilize the Fund's form entitled Capital Needs Assessment Contract Rider when contracting with an assessment provider. The form, to be completed by the assessment provider, requires the provider to list which pages of the assessment address fulfillment of each of the above requirements. Such form should be submitted with or be included as part of the capital needs assessment.**

- The Applicant must submit a written estimate of or proposal for the hard construction costs and builder's line items (Builder's General Requirements, Builder's General Overhead, and Builder's Profit – amount provided separately for each) prepared by the potential general contractor identifying such general contractor for the property and such general contractor's State license number.

Such estimate or proposal shall provide a line item breakdown of construction costs utilizing, at a minimum, the 16-divisions as defined by the Construction Specifications Institute's MasterFormat and a line item breakdown of Builder's costs for Builder's General Requirements, Builder's General Overhead, and Builder's Profit, each listed separately.

For properties which involve both rehabilitation of existing structures and new construction, the above-required estimate or proposal must clearly delineate each line item for each type of work (rehabilitation and new construction) to be completed.

If a property applies to the Top Off Set-Aside Category and such property has executed a construction contract, the Applicant must submit the following:

- the executed (by the Owner and the Property Contractor) construction contract which provides a line item breakdown of construction costs utilizing the 16-divisions as defined by the Construction Specifications Institute's MasterFormat and a line item breakdown of Builder's costs for Builder's General Requirements, Builder's General Overhead, and Builder's Profit, each listed separately;
  - if available, the most recent draw documents (e.g. AIA G702 and G703 or similar documents); and
  - if available, any AIA G701 Change Order forms executed by the Property Architect, Property Contractor, and Owner, which include the justification for such change order.
- The Applicant must have notified, in the form prescribed by the Fund, the Chief Executive Officer of the Local Jurisdiction within which the buildings in the property are or will be located. Following are the permissible methods by which such notification must be sent and what the Applicant must submit with the Reservation Request:
    - Certified mail or other verifiable commercial delivery service (e.g. FedEx, UPS, etc.) – the letter and a copy of the delivery receipt, evidencing the letter was received, or
    - Email – a copy of the email which was sent with any and all attachments and a return email from an authorized representative of the Chief Executive Officer acknowledging that the email was received. An email read receipt is not acceptable proof of acknowledgement of delivery.

*If a property applies to the Top Off Set-Aside Category, such written notification and delivery receipt does not need to be submitted.*

Note: In accordance with Subsection 42(m)(1)(A)(ii) of the Code, the Fund will notify the Chief Executive Officer of the Local Jurisdiction for **all** properties, including those applying to the Top Off Set-Aside Category.

- The Applicant must submit a Chain of Title Summary, in the form prescribed by the Fund, covering at least ten years from the date the site control was executed.

*If a property applies to the Top Off Set-Aside Category, a Chain of Title Summary does not need to be submitted.*

- The Applicant must submit a Property Architect Site Suitability Rating Form, in the most-recent form prescribed by the Fund, which has been completed and signed by the Property Architect.

*If a property applies to the Top Off Set-Aside Category, a Property Site Suitability Rating Form does not need to be submitted.*

- The Applicant must submit a **color** FEMA dynamic FIRMette flood map of the property site from the FEMA Flood Map Service Center website (<https://msc.fema.gov/portal/>).

*If a property applies to the Top Off Set-Aside Category, a color flood map does not need to be submitted.*

- The Applicant must submit a response from the State Historic Preservation Office (“SHPO”) in response to a request of a Section 106 of the National Historic Preservation Act Review.

**Important Notes:**

- To provide enough time for a response to be received from SHPO, it is recommended that the Applicant submit a request to SHPO no later than 45 calendar days prior to the Reservation Request due date. If a response has not been provided by SHPO by the Reservation Request due date, evidence that a full and complete Section 106 Review Request was received by SHPO at least 30 calendar days prior to the Reservation Request due date must be submitted.
- The submission to SHPO must contain true and accurate information (matching the property Reservation Request) regarding the property including, but not limited to, the type of property (adaptive re-use, substantial rehabilitation and/or new construction) and whether or not historic tax credits are being pursued.

**If a SHPO response is not received by the Reservation Request due date and the request to SHPO was not submitted at least 30 calendar days prior to the Reservation Request due date, this acceptance issue is not-correctable and will result in the rejection of the property.**

Note: Per SHPO: “The office has 30 days to review a project. Please insure that all information is provided; missing information may delay the completion of review.”

*If a property applies to the Top Off Set-Aside Category, a Section 106 response does not need to be submitted.*

- For any **property which includes new construction**, the Applicant must submit a site plan which fulfills one of the following options:
  - a site plan showing building locations and including the following: any easements; property lines; setback requirements; existing and proposed grades; existing and proposed utility connections; all drainage, erosion, and sediment control; proposed sidewalks and drives; and proposed landscaping; or
  - a site plan (to scale) showing overall dimensions of the proposed buildings and major site elements (e.g. parking areas, sidewalks, playground, storm

water drainage control elements, etc.). Contour lines and elevations are not required.

*If a property applies to the Top Off Set-Aside Category, such site plan does not need to be submitted.*

- ~~• For any Tax Exempt Bond Financed Property, the Applicant must submit documentation evidencing that 50 percent or more of the aggregate basis of the property will be financed by tax exempt obligations which received a bond volume cap allocation in order to be allocated Credit outside of the State Housing Credit Ceiling.~~
- The Applicant must submit a **professionally-prepared** and **independent** comprehensive market study of the housing needs of low-income individuals in the area to be served by the property. The market study should quantify and conclude as to the sufficiency of the demand for the units in the proposed property based specifically upon the applicable LIHTCP income limits and rent restrictions.

*If a property applies to the Top Off Set-Aside Category, a market study does not need to be submitted.*

The market study should be specific and detailed with respect to each of the following:

- property description, including, but not limited to
  - site location description;
  - proximity to neighborhood/community amenities;
  - property unit mix, square footage, and rent structure by number of bedrooms;
  - property facilities, equipment and amenities; and unit equipment and amenities, and
  - adequacy of planned on-site parking; and
  - photographs of the site;
- definition of the market area for the property;
- relevant demographic analyses of population and households for the defined market area;
- an overview of local economic conditions, including employment by sector, list of major employers, and labor force employment and unemployment trends over the prior five years;

- an analysis of the existing and proposed residential rental housing stock (both affordable and market rate) in the defined market area, which includes (to the extent reasonably possible or readily available), but is not limited to, property name and location, age and condition of the property (exterior photograph required for each existing property), property unit mix by number of bedrooms, affordable or market rate, current rent structure by number of bedrooms, occupancy level by number of bedrooms, waiting list by number of bedrooms, and type, amount, extent and duration of any rent concessions offered **(the market analyst must include and consider all proposed residential housing stock, including, but not limited to, LIHTCP properties which are currently under construction/rehabilitation in the primary market area)**);
- an analysis in the form prescribed by the Fund (Residential Rental Housing Stock Occupancy Summary) of the occupancy and vacancy rates for the existing residential rental housing stock (surveyed above) overall; and stratified by subsidized and non-subsidized, by type of occupancy (family/elderly), and by number of bedrooms in the unit – any occupancy of less than 90% or vacancy of more than 10% identified overall or within any of the above stratifications must be addressed with respect to the underlying causes;
- an evaluation and conclusion of the impact, if any, the property would have on the occupancy of the existing and proposed residential rental housing stock (both affordable and market rate) in the defined market area **(the market analyst must include and consider all proposed residential housing stock, including, but not limited to, LIHTCP properties which are currently under construction/rehabilitation in the primary market area)**);
- a comparison of the monthly housing cost of the units in the property to the monthly housing cost of available comparable alternative housing resources in the defined market area;
- a calculation of the demand by unit size (number of bedrooms) for the defined market area in total and specifically for LIHTCP income-eligible households for which the proposed rent structure would be considered affordable at **30%** of the household's income, including the assumptions made, and an explanation and justification for the use of such assumptions for the purposes of such calculations **[be certain to consider the appropriate household sizes (in the proper income range) for the units in the property in the calculation of demand (e.g. it is not appropriate to include four person households for one bedroom units, even if they fall within the appropriate income range)]**;

- the monthly absorption rate for the initial occupancy of the units in the property;
- for properties with proposed commercial space, the market study must include a calculation and determination of the demand for such commercial space;
- for Existing Housing, the market study must include an analysis of the scope of the renovations and what impact such scope would have on the marketability of the property;
- for Existing Housing (including occupied housing which will be demolished and replaced with new construction), the market study must include information as to whether the tenants will be relocated (off-site) during the rehabilitation, the duration of such relocation, and the impact on the occupancy of the property post-rehab;
- a determination and conclusion with respect to the reasonableness of the proposed rent structure for the property;
- a final and overall determination (numerically quantitative) of and an affirmative conclusion (narratively expressed) on the market for the property to which such market study relates;
- a certification that a physical inspection of the defined market area was performed, that the information used and provided is true and accurate at the time the market study was prepared, and identity of interest disclosure of the market study preparer, evidencing such market study preparer is a disinterested party; and
- the experience and professional qualifications of the market study preparer and of assigned personnel.

**It is highly recommended that the applicant utilize the Fund's form entitled Market Study Contract Rider when contracting with a study provider. The form, to be completed by the study provider, requires the provider to list which pages of the study address fulfillment of each of the above requirements. Such form should be submitted with or be included as part of the market study.**

**Note:** For properties proposed to be located in counties with no LIHTCP production (currently Clay and Doddridge), it is highly recommended such properties be sized conservatively (small number of units) given the fact that these counties are rural, and the market is small.

The Fund and/or the Fund's agent will review and evaluate each market study specifically as it relates to the study's satisfaction of the above-stated requirements

for an acceptable market study and to the study's primary purpose of determining the sufficiency of the market for the property as proposed. The Fund reserves the right to reject any Reservation Request solely on the basis of the market for any such property. However, the Fund's or its agent's review, evaluation, and acceptance of a market study are solely for the Fund's use. Applicants, lenders, syndicators, and any other parties involved in any such property are not entitled to and should not rely upon or in any way utilize the Fund's or its agent's review, evaluation, and acceptance with respect to the market study for any purpose.

**For residential rental units which (1) target households at or below 60% of the area median gross income and (2) do not have property based subsidy attached to such units, the Fund expects that the gross tenant paid rent will be set generally no lower than 85% and generally no higher than 90% of the applicable IRS Rent Restriction, to provide a reasonable "band of affordability." The Fund may question gross tenant paid rents for such units which are set lower than 85% of the applicable IRS Rent Restriction.** Subsection 42(m)(2) of the Code requires that the housing credit dollar amount allocated to a property not exceed the amount that the allocating agency determines is necessary for the financial feasibility of the property and its viability as a qualified low-income housing property throughout the Credit Period. If gross tenant paid rents are set at an unreasonably low amount, this results in lower property income, which results in the inability to carry an amount of permanent debt which may otherwise be carried. This ultimately results in a Credit request which is above what a property needs in order to be financially feasible. The market study should include gross tenant rents set at the highest amount which are attainable given the market and comparable properties.

#### Threshold Review and Correction Period

A Threshold Review is a review of a property's Reservation Request to determine if such request includes the necessary documentation to fulfill the above-listed Requirements for Reservation Requests. The Fund will complete the Threshold Reviews of Reservation Requests received and offer the Applicants a reasonable period of time to correct any minor acceptance deficiencies. If an Applicant is unable to address and resolve such minor acceptance deficiencies prior to the end of the Correction Period, the Fund will reject the property's Reservation Request and will notify the Applicant of the rejection and of the reason for the rejection. The dates of the Threshold Review and Correction Periods are listed in the Program Calendar.

With regard to the Threshold Review and Correction Period it is important to note the following:

- **The Fund's expectation is that all Applicants will make their best effort to complete the application and to provide all applicable attachments to fulfill all Reservation Request requirements. If it becomes apparent, in**



the Fund's sole discretion, that an Applicant took liberal advantage of the Threshold Review and Correction Period, the provisions of this subsection may not apply to such property. Examples of an Applicant taking liberal advantage of the Threshold Review and Correction Period are, but are not limited to, submitting a market study or Capital Needs Assessment after the deadline date and time, or failure to fulfill multiple requirements.

- **During the Threshold Review the Fund will not review the applications for items relating to selection and preference scoring. Scoring criteria are separate from acceptance requirements. The Fund will not accept any additional documentation except for the specific acceptance-related documentation which is requested to be submitted during the Correction Period.**

#### Carryover Allocation Requests

The Fund will accept Carryover Allocation Requests for selected properties on or before September 30. The Fund will continue to accept Carryover Allocation Requests for selected properties after the stated deadline of September 30 through December 10, to the extent reasonably possible. The Fund will not accept Carryover Allocation Requests after December 10 except in extenuating circumstances, which shall be determined in the Fund's sole discretion. A Late Submission Fee will be due in connection with any Carryover Allocation Request submitted on or after October 1. **For Carryover Allocation Requests submitted on or after October 1, the Fund offers no assurance to the Applicants that the Fund will have sufficient time to process any such Carryover Allocation Request, and, accordingly, the Fund offers no assurance to the Applicants that the Fund will have sufficient time to issue the requested Carryover Allocation Certificate.**

The Fund accepts Carryover Allocation Requests solely through the Procorem web portal. All Carryover Allocation Request documents must be uploaded to the Carryover Allocation Request subfolder in the property's Procorem WorkCenter, with the exception of any applicable Late Submission Fees which must be submitted by check or wire transfer.

In the event an Applicant fails to submit all of the necessary supporting documentation to verify the property's satisfaction of the requirements listed below, including any applicable Late Submission Fee, the Fund will notify the Applicant of the acceptance deficiencies. If applicable, the Late Submission Fee accrues at the applicable daily rate until all acceptance deficiencies are addressed and resolved. The Late Submission Fee Schedule is included in the Processing Fee, Late Submission Fee section of the Manual.

The requirements for Carryover Allocation Requests are as follows:

- The Applicant must submit
  - a complete updated current WVHDF Form 1040 in Excel format,
  - a completed and certified Quality of Housing section of the current WVHDF Form 1040 for each non-contiguous parcel which (post-construction) will contain residential rental units [if the Quality of Housing responses, the Property Architect, and the Property Contractor have **not** changed, submit the pages which were submitted with the Reservation Request],
  - an executed WVHDF Form 1040 signature page, and
  - a current Schedule B – Standard accompanied by an independent CPA Cost Certification or a current Schedule B – Owner’s Self-Certification. The Schedule B submission requirements are as follows:
    - a current Schedule B – Standard must be accompanied by an independent CPA Cost Certification as to the Owner’s basis in the property as of the date the Schedule B was prepared (Column A of Schedule B) as a percentage of the Owner’s reasonably expected basis in the property as of the close of the second calendar year following the calendar year in which the allocation is made (Column C of Schedule B).
    - a current Schedule B – Owner’s Self-Certification, which is a written certification from the Owner, signed under penalty of perjury, of the percentage of the reasonably expected basis in the property that the Owner has incurred by the close of the current calendar year. The Schedule B must be accompanied by supporting source documentation verifying the costs included in Column A, including, but not limited to invoices.

*If a property applies to the Top Off Set-Aside Category, a Schedule B does not need to be submitted.*

- The Applicant must submit a property development timeline which evidences that the anticipated placed in service dates for the buildings in the property are no later than December 31 of the second calendar year following the calendar year in which the initial Carryover Allocation is (was) made. The timetable included in WVHDF Form 1040 will be an acceptable property development timeline to fulfill this requirement.
- ~~The Applicant must submit, if applicable, a Late Submission Fee in the form and amount specified in the Processing Fee section of the Manual.~~
- The Applicant must submit an updated and accepted (by the Ownership Entity) written response from the syndicator providing an estimate of the percentage of tax credit dollars that will be available to fund property costs. Such written response **must be dated within 60 calendar days prior to the Carryover Allocation Request submission.**

- **Regardless of whether or not ~~If~~ there is a change from the written estimate or proposal which was submitted with the property's Reservation Request**, the Applicant must submit a written estimate of or proposal for the hard construction costs and builder's line items (Builder's General Requirements, Builder's General Overhead, and Builder's Profit – amount provided separately for each) prepared by the potential general contractor identifying such general contractor for the property and such general contractor's State license number.

Such estimate or proposal shall provide a line item breakdown of construction costs utilizing, at a minimum, the 16-divisions as defined by the Construction Specifications Institute's MasterFormat and a line item breakdown of Builder's costs for Builder's General Requirements, Builder's General Overhead, and Builder's Profit, each listed separately.

For properties which involve both rehabilitation of existing structures and new construction, the above-required estimate or proposal must clearly delineate each line item for each type of work (rehabilitation and new construction) to be completed.

If a property applies to the Top Off Set-Aside Category and such property has executed a construction contract the Applicant must submit the following:

- the executed (by the Owner and the Property Contractor) construction contract which provides a line item breakdown of construction costs utilizing the 16-divisions as defined by the Construction Specifications Institute's MasterFormat and a line item breakdown of Builder's costs for Builder's General Requirements, Builder's General Overhead, and Builder's Profit, each listed separately;
  - if available, the most recent draw documents (e.g. AIA G702 and G703 or similar documents); and
  - if available, any AIA G701 Change Order forms executed by the Property Architect, Property Contractor, and Owner, which include the justification for such change order.
- The Applicant must submit a Secretary of State-issued Certificate of Existence or Authorization, as applicable, evidencing that it is properly in existence or qualified and registered to do business in the State.
  - The Applicant must submit, if applicable, a Late Submission Fee in the form and amount specified in the Processing Fee section of the Manual.

The property must receive a Carryover Allocation Certificate from the Fund no later than December 31.

### Phase I Environmental Site Assessment

If a property is selected to receive an allocation of Credits, the Fund must receive **no later than 90 calendar days after the date of the property’s selection letter**, a professionally-prepared and independent Phase I Environmental Site Assessment (“Phase I”) for the property, **addressed to and prepared for the Fund**. The Phase I must be prepared in accordance with the American Society for Testing and Materials (ASTM) E1527-13 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, or its successor standard.

**In addition to the ASTM standards**, the following considerations must be addressed in the Phase I:

- asbestos-containing building materials, radon, lead-based paint, regulatory health and safety compliance;
- continuing obligations or ongoing responsibilities, state and local compliance responsibilities related to toxic or hazardous substances, or corrective action relating to past noncompliance on the property;
- indoor air quality;
- lead in drinking water;
- mold; and
- potential for residual contamination from agricultural activities, such as the use of arsenical pesticides, even where such substances were used in accordance with the label.

**It is highly recommended that the applicant utilize the Fund’s form entitled Phase I Environmental Site Assessment Contract Rider when contracting with an assessment provider. The form, to be completed by the assessment provider, requires the provider to list which pages of the assessment address fulfillment of each of the above requirements. Such form should be submitted with or be included as part of the Phase I.**

Such Phase I will be reviewed by the Fund’s designated construction professional for the purposes of the LIHTCP. For properties which are requesting HOME Program or HTF Program funds from the Fund, such Phase I will also be reviewed for purposes of the HOME Program and/or HTF Program, as applicable, in accordance with the applicable regulations. Issues identified that cannot be remediated or that are cost prohibitive may result in such property’s selection decision being rescinded. The Fund’s review of the Phase I is solely for the Fund’s use. Applicants, lenders, syndicators, tenants, and any other parties involved in any such property are not entitled to and should not rely upon or in any way utilize the Fund’s review of the Phase I for any purpose.

All environmental issues associated with a property must be remediated to a standard acceptable to the Fund. The Applicant is responsible for all legal costs and fees, if any, incurred by the Fund in reviewing and accepting the remediation plans submitted by the Applicant.

*If a property applies to the Top Off Set-Aside Category, a Phase I Environmental Site Assessment does not need to be submitted.*

### Prior to Equity Closing

*The provisions of the Prior to Equity Closing subsection do not apply to properties applying to the Top Off Set-Aside Category.*

Prior to equity closing, the Fund will re-underwrite the property utilizing the updated information. Such underwriting may indicate that a reduction of Credits is necessary or may, in some cases, indicate that a property may need to apply for additional Credits at the next scheduled application cycle.

Note: Once a property places in service, such property is not permitted to request additional Credits in a subsequent calendar year.

If the underwriting indicates that a reduction of Credits is necessary, the Fund may require such Ownership Entity to sign a Mutual Consent Agreement to a Return of Credit (WVHDF LIHTCP-9) so that such Credits can be re-allocated in the current or following year.

All required pre-equity closing documents must be uploaded to the Prior to Equity Closing subfolder in the property's Procorem WorkCenter, including the complete and final construction plans and specifications. The Fund does not want printed full-size plans submitted during the Prior to Equity Closing stage.

If the property is requesting Fund-provided construction and/or permanent financing which requires approval by the Fund's Board of Directors, see the Special Note at the bottom of this section of the Manual.

The requirements for Prior to Equity Closing are as follows:

- No later than 30 calendar days prior to the completion and submission to the Fund of the final plans and specifications, the Applicant must submit the following:
  - evidence documenting that the Property Architect and Property Contractor have completed Fair Housing Act and Americans with Disabilities Act training as outlined in the Requirements for Requests and Time-Sensitive Deadlines, Reservation Requests subsection of the Manual.
  - if committed to in the property's Reservation Request, evidence documenting that the Property Contractor or a Principal of the developer/co-developer has

attended Green Building Training as outlined in the Green Building Training for Residential Housing subsection of the Plan.

- No later than 30 calendar days prior to equity closing, the Applicant must submit the following:
  - a Notification of Equity Closing Date (WVHDF Form LIHTCP-L),
  - ownership chart of the Ownership Entity (down to the individual level) including percentages owned,
  - complete and final construction plans,
  - complete and final construction specifications,
  - if the Favorable Financing scoring criterion was committed to in the property's Reservation Request, Pre-Development and Bridge Financing documentation evidencing fulfillment of the requirements as outlined in the Favorable Financing scoring criterion subsection of the Plan, or evidence that the property does not require Pre-Development and Bridge Financing,
  - an updated construction cost estimate and/or construction contract based upon the complete and final plans and specifications. The final construction cost estimate or construction contract shall identify the actual general contractor for the property and such general contractor's State license number and provide a line item breakdown of construction costs utilizing, at a minimum, the 16-divisions as defined by the Construction Specifications Institute's MasterFormat and a line item breakdown of Builder's costs for Builder's General Requirements, Builder's General Overhead, and Builder's Profit, each listed separately,
  - **for properties which involve rehabilitation of Existing Housing**, a complete and final scope of work by unit based upon the updated construction cost estimate, and
  - **for Existing Housing properties which are claiming recently-replaced appliances, recently-replaced roofs, or recently-replaced siding and trim**, the documentation as required in the Energy Efficiency and Quality of Housing section of the Plan.

Note: The above-referenced complete and final construction plans should evidence fulfillment of the Applicant's Quality of Housing commitments (e.g. include door, window, HVAC, and appliance schedules).

- No later than 15 Business Days prior to equity closing, the equity syndicator must provide, and the Applicant must submit the following:
  - a Prior to Equity Closing Summary of Equity Syndicator-Required Reserves (LIHTCP-M) which summarizes information regarding **each of the reserves required by the Partnership Agreement**; and
  - a Prior to Equity Closing Summary of Equity Syndicator-Required Fees (LIHTCP-N) which summarizes information regarding **each of the fees required by the Partnership Agreement**.

**Important Note:** Any capitalized or expensed reserve account included in the property's application must be defined in the Partnership Agreement. Any funds remaining in such reserve account at the end of the Compliance Period or sale of the property, whichever is earlier, must be used to either reduce any outstanding debt on the development, or must remain with the property to fund capital improvements, maintenance and repairs, or operating shortfalls of the property. Additionally, any reserve that is temporary or is structured to be disbursed as part of a cash flow waterfall or that has contradictory language to the aforementioned Fund-required language will not be recognized as an allowable property cost for the purpose of calculating Credit need.

- No later than 15 Business Days prior to equity closing, the Applicant must submit the following:
  - a WVHDF Form 1040 with updated pages 2 through 14a,
  - the draft Partnership Agreement including any and all exhibits, and
  - any documents which have been updated from the document submitted with the Carryover Allocation Request which would impact pages 2 through 14a of WVHDF Form 1040 (e.g. an updated financing commitment).
- If required by the Fund (for a property whose General Partner has an identity of interest with the land seller), no later than 30 calendar days prior to equity closing, the Applicant must submit a professionally-prepared and independent appraisal report **addressed to and prepared for the Fund**. Such appraisal must be prepared by a licensed/certified appraiser and will be used to determine the acceptability of the purchase price of the land.

**If the property involves construction and/or permanent Fund-provided financing**, the Fund will engage the appraiser. The Applicant will be responsible for the cost of the appraisal.

- If required by the Fund (for a property which involves substantial rehabilitation), no later than 30 calendar days prior to equity closing, the Applicant must submit a professionally-prepared and independent appraisal report **addressed to and prepared for the Fund**. Such appraisal must be prepared by a licensed/certified appraiser and will be used to determine the acceptability of (1) the property's purchase price (land and buildings) and (2) the property's rehabilitation costs.

**If the property involves Fund-provided construction and/or permanent financing**, the Fund will engage the appraiser. The Applicant will be responsible for the cost of the appraisal.

If the property involves acquisition of land and buildings, the appraisal must at a minimum include the following values:

- As-Is land value (unimproved, vacant land value)

- As-Is building value (not including land)
  - **Market:** as if market rents are in place. The appraiser will not consider the unique aspects of below-market financing, federal subsidies and/or Credits in this value estimate.
  - **Restricted:** based on current restricted rents (not inflated). The appraiser will consider the unique aspects of below-market financing, federal subsidies and/or Credits in this value estimate.
- Prospective value upon completion of rehabilitation (not including land)
  - **Market:** as if market rents will be in place. The appraiser will not consider below-market financing, federal subsidies and/or Credits in this value estimate.
  - **Restricted:** based on estimated future restricted rents. The appraiser will consider below-market financing, federal subsidies and/or Credits in this value estimate.

At a minimum, the appraiser must utilize the Income Approach and either the Sales Comparison Approach or Cost Approach. The acceptability of the property's purchase price (land and buildings) will be determined based upon the Income Approach. If the purchase price is greater than the appraised value, the Owner must submit an explanation for the excess. Any excess purchase price which cannot be justified (in the Fund's sole discretion) will be disallowed. Generally, the prospective value of the property (plus the appraised value of the land), must support the total Adjusted Basis of the acquisition and substantial rehabilitation of the buildings in the property (exclusive of the developer's fee and other intermediary costs) and the total cost attributed to the land.

In addition to the appraisal report, the appraiser must complete the Fund's form entitled Appraisal Valuations Summary Sheet. Such summary sheet must be submitted with or included as part of the appraisal.

Special Note: The above deadlines pertain solely to LIHTCP requirements. **If the property is requesting Fund-provided construction and/or permanent financing which requires approval by the Fund's Board of Directors, additional lead time may be necessary in order for the Fund to prepare the Board packet.**

Documents Due One Year from the Date of the Carryover Allocation Certificate

*The provisions of the Documents Due One Year from the Date of the Carryover Allocation Certificate subsection do not apply to properties applying to the Top Off Set-Aside Category.*

Additionally, the provisions of this subsection do not apply to Tax-Exempt Bond Financed Properties. See instead the section entitled Bond Closing Deadline and Post-Bond Closing Submissions for Tax-Exempt Bond Financed Properties.



The Fund has implemented the provision of the Housing and Economic Recovery Act of 2008 relating to the extension of time to meet the 10% Carryover Allocation Test to one year from (carryover) allocation. Accordingly, as required by Subsection 42(h)(1)(E)(ii) of the Code, an Owner of a building that receives a Credit allocation (Carryover Allocation Certificate) under the State Housing Credit Ceiling must have basis in the property as of the date which is one year from the date of the Carryover Allocation Certificate of more than 10% of the Owner's reasonably expected basis in the property as of the close of the second calendar year following the calendar year in which the allocation is made.

For the purposes of the 10% Carryover Allocation Test, basis means Adjusted Basis of land and depreciable real property, whether or not such amounts are includable in Eligible Basis (as defined in Subsection 42(d) of the Code). An Owner has basis in land and other acquired real property when the benefits and burdens of ownership have been transferred to the Owner. Whether an Owner has basis in construction costs depends upon the method of accounting used by the Owner (i.e., accrual or cash). The accounting method of any flow-through entity shall be applied to determine the Owner's basis for the Carryover Allocation Test.

The Fund has determined that certain other requirements must be fulfilled during this one-year period in order for a property to evidence progression towards placing in service within the two-year timeframe prescribed by Subsection 42(h)(1)(E)(i) and as described in the first paragraph of the Requirements for Requests, Allocation Requests section of the Manual. If each and every applicable requirement listed below is not fulfilled by the prescribed timeframe, the property's Credit allocation will be cancelled and returned to the Fund.

**Given the importance of these requirements, the Fund strongly encourages the Applicant to achieve the 10% Carryover Allocation Test and to submit all documents necessary to fulfill the requirements listed below within three to six months into the above-referenced one-year period.** Delaying the achievement of any of the requirements listed below reduces the time remaining for the property to place in service and may jeopardize the Credit allocated to the property. As required by Subsection 42(h)(1)(E)(i) of the Code, a building that receives a Credit allocation (Carryover Allocation Certificate) under the State Housing Credit Ceiling must place in service no later than December 31 of the second calendar year following the calendar year in which the allocation was made. Neither the Plan nor the Manual contemplates or permits an automatic re-allocation of returned Credits if the placed-in-service deadline is not fulfilled. It is the joint responsibility of the General Partner and the property developer to ensure that adequate time is allotted to place all buildings in service prior to the above-referenced placed-in-service deadline. If a building is not placed in service within the specified timeframe, the allocation will be cancelled and returned to the Fund.

No later than one year from the date of the Carryover Allocation Certificate, the Applicant must submit the following:

- a Schedule B – One-Year accompanied by an independent CPA Cost Certification evidencing that the Owner’s basis in the property as of the date the Schedule B was prepared is more than 10% of the Owner’s reasonably expected basis in the property, as of the close of the second calendar year following the calendar year in which the allocation is made; or if the property places in service within the one-year period, the Owner may instead submit, by no later than one year from the date of the Carryover Allocation Certificate, a Schedule D to WVHDF Form 1040 (Final Cost Certification) accompanied by an Independent CPA Cost Certification and Examination report;  
Note: The current model formats for the Carryover Allocation Test Letter and Independent CPA Cost Certification are attached as Exhibit B to the Manual. The Fund will accept modifications to the model formats if necessary, to conform to policy changes by the American Institute of Certified Public Accountants.
- a WVHDF Form 1040 with updated pages 2 through 14a.
- documentation evidencing that the Owner has maintained continuous site control (from the date of the initial site control submitted with the property’s Reservation Request) in the name of the Ownership Entity, and has established site control in the name of the Ownership Entity in the form of a recorded deed or Long-Term Lease.
- documentation evidencing that the Owner has received a written permanent financing commitment for all sources and amounts of permanent financing (including any developer financing – the Applicant must submit a fully completed and executed Fund form entitled Deferred Developer Fee Permanent Financing Commitment. It is anticipated that the Deferred Developer Fee will bear no interest).
- the final fully executed Partnership Agreement with the equity provider.
- documentation evidencing that all necessary/required local zoning, local planning, and building permit approvals have been received. If a property is located in a jurisdiction which does not require one or more of these approvals, the Applicant must submit documentation evidencing that fact.
- if applicable, documentation evidencing that all necessary/required HUD approvals have been received. HUD approvals include, as applicable to the property, the following:
  - Evidence of transfer of property-based rental assistance to the Ownership Entity;
  - HUD’s “Authority to Use Grant Funds”;

- Evidence of HUD/FHA loan note insurance;
  - Fully executed Agreement to Enter into Housing Assistance Payments Contract, including Part I, Part II, and all necessary and required exhibits AND evidence of HUD subsidy layering review completion AND evidence of environmental review approval; and/or
  - “Environmental Statutory Checklist” (if environmental publication is not required).
- if applicable, documentation evidencing that all necessary/required RD approvals have been received. RD approvals include, as applicable to the property, the following:
    - Mortgage Loan Assumption Agreement;
    - Interest Credit Agreement;
    - Rental Assistance Agreement; and/or
    - Evidence of an RD loan note guarantee in the form of a conditional commitment.
  - the following management documents:
    - an Affirmative Fair Housing Marketing Plan on Form HUD-935.2A (12/2011 or most recent version) for the property, and all required attachments. [If the Owner submits a plan which has been approved by HUD or RD, and such approval is currently in force, the Fund may accept that approved plan to satisfy this requirement.],
    - property management plan,
    - property management agreement,
    - property tenant selection plan,
    - form of property lease agreement, and
    - all lease addendums.

Note: Minor deficiencies identified as a result of the Fund’s review of the Affirmative Fair Housing Marketing Plan may be resolved by virtue of an updated plan that addresses any such minor deficiencies.

**Bond Closing Deadline and Post-Bond Closing Submissions for Tax-Exempt Bond Financed Properties**

*The provisions of this subsection apply only to Tax-Exempt Bond Financed Properties.*

Once a Tax-Exempt Bond Financed Property receives a Selection Decision Letter which provides notification that the Property has been selected to receive Credits, such property must close on the bonds and the equity prior to December 15 of the following calendar year.

For Tax-Exempt Bond Financed Properties, no later than 90 calendar days after the bond closing for such property, the Applicant must submit the following:

- documentation evidencing that the Owner has maintained continuous site control (from the date of the initial site control submitted with the property’s Reservation Request) in the name of the Ownership Entity, and has established site control in the name of the Ownership Entity in the form of a recorded deed or a Long-Term Lease.
- documentation evidencing that the Owner has received a written permanent financing commitment for all sources and amounts of permanent financing (including any developer financing – the Applicant must submit a fully completed and executed Fund form entitled Deferred Developer Fee Permanent Financing Commitment. It is anticipated that the Deferred Developer Fee will bear no interest).
- the final fully executed Partnership Agreement with the equity provider.
- documentation evidencing that all necessary/required local zoning, planning, and building permit approvals have been received. If a property is located in a jurisdiction which does not require one or more of these approvals, the Applicant must submit documentation evidencing that fact.
- documentation evidencing that all necessary/required HUD approvals have been received. HUD approvals include, as applicable to the property, the following:
  - Evidence of transfer of property-based rental assistance to the Ownership Entity;
  - HUD’s “Authority to Use Grant Funds;”
  - Evidence of HUD/FHA loan note insurance;
  - Fully executed Agreement to Enter into Housing Assistance Payments Contract, including Part I, Part II, and all necessary and required exhibits AND evidence of HUD subsidy layering review completion AND evidence of environmental review approval; and/or
  - “Environmental Statutory Checklist” (if environmental publication is not required).
- documentation evidencing that all necessary/required RD approvals have been received. RD approvals include, as applicable to the property, the following:
  - Mortgage Loan Assumption Agreement;
  - Interest Credit Agreement;
  - Rental Assistance Agreement; and/or
  - Evidence of an RD loan note guarantee in the form of a conditional commitment.
- the following management documents:
  - an Affirmative Fair Housing Marketing Plan on Form HUD-935.2A (12/2011 or most recent version) for the property, and all required attachments. [If the Owner submits a plan which has been approved by HUD or RD, and such

approval is currently in force, the Fund may accept that approved plan to satisfy this requirement],

- property management plan,
- property management agreement,
- property tenant selection plan,
- form of property lease agreement, and
- all lease addendums.

Note: Minor deficiencies identified as a result of the Fund’s review of the Affirmative Fair Housing Marketing Plan may be resolved by virtue of an updated plan that addresses any such minor deficiencies.

Special Note: The above deadlines pertain solely to LIHTCP requirements. **Generally, the above-referenced documents would be required by the lenders, syndicators, and other parties, prior to bond closing.**

### Lease-Up Stage and Rent Increases Post-Prior to Equity Closing Underwriting

During the lease-up stage, it is anticipated that units will be rented at the net tenant rents included in the Prior to Equity Closing WVHDF Form 1040. In order to rent units at a rent which is higher than those rents reflected at the Prior to Equity Closing stage, the Fund’s written consent must be requested and obtained. In addition, the Fund anticipates implementing formal procedures for rent increases as well as annual utility allowance approvals. Such procedures will be outlined in the Tax Credit Compliance Manual.

### Allocation Requests

As required by Subsection 42(h)(1)(E)(i) of the Code, a building that receives a Credit allocation (Carryover Allocation Certificate) under the State Housing Credit Ceiling must place in service no later than December 31 of the second calendar year following the calendar year in which the allocation was made. If a building is not placed in service within the specified timeframe, the allocation will be cancelled and returned to the Fund.

For a building to receive a Credit allocation under the State Housing Credit Ceiling, it must receive Allocation Certifications, constituting a final Credit allocation. Such Allocation Certifications are issued by the Fund in conjunction with the Fund’s processing of a property’s Allocation Request. An Applicant may submit a property’s Allocation Request provided that:

- all buildings in the property are placed in service (for new construction properties, such properties must fulfill the Substantial Completion requirements as contained in the Allocation Policies, Substantial Completion Requirements for Newly Constructed Building section of the Manual),
- all permanent loans for the property are closed, and

- all construction loans have been repaid.

In the event the above-stated requirements are fulfilled in the last quarter of the calendar year, at the Applicant's request and with the Fund's approval, the Allocation Request may be submitted in the next calendar year in order for the Applicant to avoid submission of a Late Submission Fee. The Fund will process the Allocation Request as time permits, but processing will be completed no later than December 31 of the calendar year the Allocation Request was submitted.

If an Applicant has placed buildings in service but does not fulfill the permanent financing and/or construction financing requirements listed above, but such Applicant is eligible to and desires to claim Credits in the placed-in-service year, the Fund will execute the Regulatory and Restrictive Covenants for Land Use Agreement prior to the end of the calendar year. Generally, the amount of Credits referenced in the Regulatory and Restrictive Covenants for Land Use Agreement will be the amount allocated in the property's Carryover Allocation Certificate. The Fund will not issue the Allocation Certifications for the property until it has received and reviewed the Allocation Request. Documentation evidencing placement in service must be submitted in order for this provision to be applicable.

Special Note: Consistent with 26 CFR 1.42-14(d)(2)(ii), an allocation of Credits may not be returned, in whole or in part, any later than 180 calendar days following the close of the first taxable year of the Credit Period for the building that received the allocation. After that date, Credits that might otherwise be returned expire, and cannot be returned to or reallocated by the Fund. Therefore, in order to enable the Fund to re-allocate Credits which may be returned by a property placing in service, generally the Fund requires that Allocation Requests be submitted no later than April 30 of the year following the first tax year of such property's Credit Period. **Consequently, it is important to take this into consideration when structuring construction loan repayment (or conversion to permanent status) or when structuring permanent loan closing.**

The Fund will accept Allocation Requests for selected properties on or before September 30. The Fund will continue to accept Allocation Requests for selected properties through December 10, to the extent reasonably possible, and will not accept Allocation Requests after December 10, except in extenuating circumstances, which shall be determined in the Fund's sole discretion. A Late Submission Fee, in an amount set forth in the Processing Fee section of the Manual, will be due in connection with any Allocation Request submitted on or after October 1. **The Fund offers no assurance to the Applicants that the Fund will have sufficient time to process any Allocation Request received on or after October 1.**

The Fund accepts Allocation Requests solely through the Procorem web portal. All Allocation Request documents must be uploaded to the Allocation Request subfolder

in the property's Procorem WorkCenter, with the exception of the Final Fee and any applicable Late Submission Fee which must be submitted by check or wire transfer.

In the event an Applicant fails to submit all of the necessary supporting documentation to verify the property's satisfaction of the requirements listed below, the Fund will notify the Applicant of the acceptance deficiencies. If applicable, the Late Submission Fee accrues at the applicable daily rate until all acceptance deficiencies are addressed and resolved. The Late Submission Fee Schedule is included in the Processing Fee, Late Submission Fee section of the Manual.

The requirements for Allocation Requests are as follows:

- The Applicant must submit
  - a complete updated WVHDF Form 1040 in Excel format,
  - a completed and certified Quality of Housing section of WVHDF Form 1040 for each non-contiguous parcel which (post-construction) will contain residential rental units [if the Quality of Housing responses, the Property Architect, and the Property Contractor have **not** changed, submit the pages which were submitted with the Reservation Request],
  - an executed WVHDF Form 1040 signature page,
  - a Schedule A to WVHDF Form 1040 for each building in the property (not required for single-building properties), and
  - a Schedule D to WVHDF Form 1040.

The Schedule D must be accompanied by an Independent CPA Cost Certification and Examination report, the required elements of which are described in the Allocation Policies, Cost Certification Requirements, Independent CPA Cost Certification and Examination section and Exhibit C to the Manual.

- The Applicant must submit documentation evidencing that all buildings in the property (according to Credit type – new construction, acquisition, or rehabilitation) have been placed in service during the same calendar year. In limited circumstances, the Fund, on a case-by-case basis and upon written request from the Owner, may allow a property to place buildings in service in different calendar years.
- The Applicant must submit the Final Fee in the form and amount specified in the Processing Fee section of the Manual.
- The Applicant must submit a copy of the promissory note for and must have closed on all sources of permanent financing (including any developer financing), for all amounts of such financing. In lieu of a promissory note for the deferred Developer's Fee, the Fund will accept the Development Services Agreement or comparable agreement, if such document includes the terms, timeframe, and obligation to pay such deferred Developer's Fee.

- The Applicant must submit documentation evidencing that all construction financing has been repaid.
- The Applicant must submit an executed (by the Owner and the Property Contractor) construction contract specifying the contract amount and builder's line items (Builder's General Requirements, Builder's General Overhead, and Builder's Profit – amount provided separately for each) identifying the actual general contractor for the construction of the property and such general contractor's State license number. The final draw documents (e.g. AIA G702 and G703 or similar documents) must also be submitted. The final construction contract shall provide a line item breakdown of construction costs utilizing the 16-divisions as defined by the Construction Specifications Institute's MasterFormat and a line item breakdown of Builder's costs for Builder's General Requirements, Builder's General Overhead, and Builder's Profit, each listed separately.
- For multiple-building properties, the Applicant must submit an as-built site plan which identifies each building by building number and includes the unit numbers and number of units in each building.
- For any property which committed to the Reachable Green Space Percentage scoring criterion, the Applicant must submit a post-construction certified survey including a calculation of the Reachable Green Space percentage which must evidence that the criterion was met or exceeded.
- For any property that involves new construction, the Applicant must submit a Substantial Completion Certification (WVHDF Form LIHTCP-H) signed by the Owner, Property Architect, and Property Contractor that the property fulfills the definition of substantial completion as is described in the Allocation Policies, Substantial Completion Requirements for Newly Constructed Buildings section of the Manual.
- For any property which involves new HUD property-based subsidy, the Applicant must submit a fully executed Housing Assistance Payments Contract including all necessary and required attachments.
- For Tax-Exempt Bond Financed Properties, the Applicant must submit an attestation or report provided by an Independent CPA listing the percentage of each building and the land on which such building is located which was financed by tax-exempt obligations. The percentage for each building and the land on which such building is located must be 50% or greater in order to be allocated Credit outside of the State Housing Credit Ceiling.
- The Applicant must submit, if applicable, a Late Submission Fee in the form and amount specified in the Processing Fee section of the Manual.



Each building in a property must receive an Allocation Certification from the Fund no later than December 31 of the year such property fulfills the bulleted requirements as listed in the second paragraph of this section of the Manual, or no later than December 31 of the following year as described in the third paragraph of this section of the Manual. A building that is eligible to receive two types of Credit (acquisition and rehabilitation) will be issued a separate Allocation Certification for each type of Credit.

**Prior to the issuance of the final Credit Allocation Certifications for any building in a property, the Owner must execute, deliver, and cause the recording of, in the office of the Clerk of the County Commission of the county where each building in the property is located, a properly completed Regulatory and Restrictive Covenants for Land Use Agreement (WVHDF LIHTCP-7 or LIHTCP-8), which is the Fund’s agreement for the “Extended Low-Income Housing Commitment” under Subsection 42(h)(6) of the Code. Evidence showing the date, deed book and page numbers of record, must be provided to and deemed acceptable by the Fund prior to the issuance of the final Credit Allocation Certifications.** The Extended Low-Income Housing Commitment is described in the Plan under the section Selection and Preference Criteria, Preference for Properties Obligated to Serving Qualified Tenants for the Longest Periods of Time.

Additionally, the Fund will not issue the final Credit Allocation Certifications for a property until one of the Fund’s designated construction professionals has visited the site and verified that all energy efficiency and quality of housing commitments have been fulfilled. Also, prior to issuance of the final Credit Allocation Certifications, all fees owed by the General Partner to the Fund must be current.

#### Submission to the Fund of IRS Forms 8609 with Part II Completed

The Fund requests that the IRS Forms 8609 with Part II Completed by an authorized representative of the Ownership Entity be submitted to the Fund as soon as completed, but generally no later than 90 days after the IRS Forms 8609 are released by the Fund to the Ownership Entity.

#### **PROCESSING FEE**

*All of the provisions of the Processing Fee section also apply to Tax-Exempt Bond Financed Properties, except for references to the Carryover Allocation provisions.*

The Fund has established a Processing Fee structure for Applicants under the Plan:

**Initial Fee** The greater of \$1,750 or 5.0% of the housing credit dollar amount **requested**, due with the Reservation Request.

**Final Fee** The greater of \$1,750 or 5.0% of the housing credit dollar amount **allocated** (~~at final allocation for Tax-Exempt Bond Financed Properties~~ ~~or~~ at Carryover for non-Tax-Exempt Bond Financed all other properties) ~~or for Tax-Exempt Bond Financed Properties, the greater of \$1,750 or 5.0% of the housing credit dollar amount included in the Code Subsection 42(m) letter~~, due with the Allocation Request.

Note: If a property requested Credit from more than one year, the total Credits from each Carryover Allocation Certificate will be added together in order to calculate the Final Fee.

**For a property which involves both Existing Low-Income Housing and New Supply, the following fees apply:**

**Initial Fee** The greater of \$2,000 or 7.5% of the housing credit dollar amount **requested**, due with the Reservation Request.

**Final Fee** The greater of \$2,000 or 7.5% of the housing credit dollar amount **allocated** (~~at final allocation for Tax-Exempt Bond Financed Properties~~ ~~or~~ at Carryover for non-Tax-Exempt Bond Financed all other properties) ~~or for Tax-Exempt Bond Financed Properties, the greater of \$2,000 or 7.5% of the housing credit dollar amount included in the Code Subsection 42(m) letter~~, due with the Allocation Request.

Note: If a property requested Credit from more than one year, the total Credits from each Carryover Allocation Certificate will be added together in order to calculate the Final Fee.

**The Initial Fee and the Final Fee will not be applicable to any property located in a county that does not have any LIHTCP units. This currently includes two such counties: Clay and Doddridge.** As noted in the Requirements for Requests, Reservation Requests section of the Manual, it is highly recommended that properties proposed in these counties be sized conservatively (small number of units) given the fact that these counties are rural, and the market is small.

**The Initial Fee and the Final Fee will be one-half of the amount otherwise required for a property that has a qualified non-profit (see definition provided under the Selection and Preference Criteria, Property Characteristics, Set-Aside Categories subsection of the Plan) owning 100% of the General Partner interest for their first LIHTCP property.**

The Processing Fee must be submitted in the form of a check or wire transfer. If the Processing Fee is submitted in the form of a wire transfer, the Applicant must submit a Wire Transfer Notification Form at least 48 hours prior to submitting the wire transfer. The Applicant must allow enough time to ensure that the wire transfer is

received into the Fund's account prior to the stated deadline in the Program Calendar.

### Retention of the Initial Fee

The Initial Fee will be retained by the Fund in accordance with the guidelines outlined below.

- The Fund will retain the greater of \$1,750 or 3.5% (capped at a maximum of \$3,000) of the housing credit dollar amount requested for a property once its Reservation Request has been reviewed by the Fund for meeting or exceeding the applicable requirements as described in the Requirements for Requests, Reservation Requests section of the Manual, regardless of whether such property was accepted or rejected.
- The Fund will retain the greater of \$3,500 or 4.5% (capped at a maximum of \$6,000) of the housing credit dollar amount requested for a property if such property is not selected once its Reservation Request has been evaluated against the Selection and Preference Criteria. The Fund will retain this same amount on properties which do not meet or exceed the minimum score threshold.
- The Fund will retain the entire Initial Fee for a property if such property is selected and the Applicant has accepted such property's selection status in writing.

### Retention of the Final Fee

The Fund will retain the entire Final Fee for a property once such property receives its final Allocation Certifications for each building in such property.

### Late Submission Fee

In the event an Applicant submits a Carryover Allocation Request or an Allocation Request on or after October 1, the Applicant must post a Late Submission Fee in addition to the Processing Fee described above. The Late Submission Fee Schedule is as follows:

*{Remainder of page left intentionally blank.}*

Date Submitted	Late Submission Fee	Date Submitted	Late Submission Fee	Date Submitted	Late Submission Fee
10/1	\$600	11/1	\$3,800	12/1	\$9,900
10/2	\$700	11/2	\$4,000	12/2	\$10,200
10/3	\$800	11/3	\$4,200	12/3	\$10,500
10/4	\$900	11/4	\$4,400	12/4	\$10,800
10/5	\$1,000	11/5	\$4,600	12/5	\$11,100
10/6	\$1,100	11/6	\$4,800	12/6	\$11,400
10/7	\$1,200	11/7	\$5,000	12/7	\$11,700
10/8	\$1,300	11/8	\$5,200	12/8	\$12,000
10/9	\$1,400	11/9	\$5,400	12/9	\$12,300
10/10	\$1,500	11/10	\$5,600	12/10*	\$12,600
10/11	\$1,600	11/11	\$5,800	12/11	\$12,900
10/12	\$1,700	11/12	\$6,000	12/12	\$13,200
10/13	\$1,800	11/13	\$6,200	12/13	\$13,500
10/14	\$1,900	11/14	\$6,400	12/14	\$13,800
10/15	\$2,000	11/15	\$6,600	12/15	\$14,100
10/16	\$2,100	11/16	\$6,800	12/16	\$14,400
10/17	\$2,200	11/17	\$7,000	12/17	\$14,700
10/18	\$2,300	11/18	\$7,200	12/18	\$15,000
10/19	\$2,400	11/19	\$7,400	12/19	\$15,300
10/20	\$2,500	11/20	\$7,600	12/20	\$15,600
10/21	\$2,600	11/21	\$7,800	12/21	\$15,900
10/22	\$2,700	11/22	\$8,000	12/22	\$16,200
10/23	\$2,800	11/23	\$8,200	12/23	\$16,500
10/24	\$2,900	11/24	\$8,400	12/24	\$16,800
10/25	\$3,000	11/25	\$8,600	12/25	\$17,100
10/26	\$3,100	11/26	\$8,800	12/26	\$17,400
10/27	\$3,200	11/27	\$9,000	12/27	\$17,700
10/28	\$3,300	11/28	\$9,200	12/28	\$18,000
10/29	\$3,400	11/29	\$9,400	12/29	\$18,300
10/30	\$3,500	11/30	\$9,600	12/30	\$18,600
10/31	\$3,600			12/31	\$18,900

\* The Fund will not accept Carryover Allocation Requests or Allocation Requests after December 10, except in extenuating circumstances, which shall be determined in the Fund's sole discretion.

The Late Submission Fee must be submitted at the time the Applicant submits the property's Carryover Allocation Request or Allocation Request, in the form of a check or wire transfer.

The Late Submission Fee, if applicable, for properties selected from either a specific or the pooled Set-Aside Category waiting list will be waived if the Carryover Allocation Request for such property is submitted within three **Business** Days of the date of the selection letter. Otherwise, the Late Submission Fee charged will be one-half of the amount shown in the table above.

#### Market Study Resubmission Fee

The Fund will charge a \$250 fee if a market study submitted with a property's Reservation Request must be resubmitted to the Fund during the Threshold Review and Correction Period due to incorrect income bands being used in the calculation of demand in the originally submitted market study. Such fee must be submitted prior to the end of the Threshold Review and Correction Period. If the fee is not submitted in the time prescribed, the Fund will reject the property's Reservation Request.

Additionally, the Fund will charge a \$250 fee if the property's lower income targeting is required to be increased due to provisions included in the Selection and Preference Criteria, Preference for Properties Serving the Lowest Income Tenants, Option 1: Tenants with Incomes at or below 40% of the Area Median Gross Income subsection of the Plan.

#### Administrative Waiver Fee

The Fund will charge a \$1,000 fee for each administrative waiver granted with respect to a property. An administrative waiver will not take effect until the Fund has received the fee. No fee will be charged to any property in the event an administrative waiver applies to all properties.

The Fund will not grant an administrative waiver to any property whose developer and/or General Partner has either

- outstanding issues of non-compliance for any property in the State that have been reported to the IRS as continuing to be unresolved after the end of the correction period, or
- past due outstanding LIHTCP compliance monitoring fees owed to the Fund.

#### Penalty for Failure to Meet the Bond Closing Deadline

*The provisions of this subsection apply only to Tax-Exempt Bond Financed Properties.*

Once a Tax-Exempt Bond Financed Property receives a Selection Decision Letter which provides notification that the property has been selected to receive Credits, such property must close on the bonds and the equity prior to December 15 of the following calendar year. There will be no extensions. Properties failing to meet the

above-referenced December 15 deadline, will be required to pay a penalty which is defined in the Fund's Debt Management Policy.

### Ineligibility for Inclusion in Basis

Based upon guidance provided by the IRS, the Processing Fee (including any Late Submission Fee, Market Study Resubmission Fee, and any Administrative Waiver Fee) may be included as a Property Cost, but is not eligible for inclusion in Adjusted Basis, Eligible Basis, and Qualified Basis.

## **ALLOCATION POLICIES**

### Timing of Allocations

*This subsection of the Manual does not apply to Tax-Exempt Bond Financed Properties.*

The Fund's policy is to allocate (either as carryover allocations or as placed in service allocations) the current year State Housing Credit Ceiling to all selected and qualified properties on or before December 31 of the current year. Accordingly, all properties that are selected to receive any portion of the State Housing Credit Ceiling must become eligible and qualified to receive Carryover Allocation Certificates for the property or Allocation Certifications for each building in the property on or before December 31 of the current year.

Any selected property that is not eligible and qualified to receive Carryover Allocation Certificates for the property or Allocation Certifications for each building in the property on or before December 31 of the current year will not be carried over into the next year. The Credits reserved in the selection notification letter and Binding Agreements (and Elections for Applicable Percentages) (WVHDF LIHTCP-4) entered into for the buildings in any such property will be automatically canceled and the application for the property will be automatically rejected.

If the Fund executes Binding Agreements in a previous year to allocate a portion of a future year's State Housing Credit Ceiling, such Credit will reduce the amount available in the applicable set-aside category. Such reduction will be reflected in the State Housing Credit Ceiling – Set-Aside Categories and Amounts for the corresponding calendar year. Such Binding Agreements will not be honored after December 31 of the following year unless the property has been issued a Carryover Allocation Certificate or each building in the property has been issued Allocation Certifications on or before December 31 of the following year.

Except as is referred to in the Property Selection Process, Property Selection section of the Plan, the Fund will not enter into Binding Agreements (WVHDF LIHTCP-4) that commit the Fund to allocate any housing credit dollar amounts from any future year's State Housing Credit Ceiling.

## Issuance of Subsection 42(m) Letter

*The provisions of this subsection apply only to Tax-Exempt Bond Financed Properties.*

Subsection 42(m)(1)(D) of the Code provides that in order for a Tax-Exempt Bond Financed Property to receive an allocation of Credits outside of the State Housing Credit Ceiling, such property must satisfy the requirements for an allocation of Credits under the qualified allocation plan applicable to the area in which the property is located. Additionally, Subsection 42(m)(2)(D) of the Code provides that the governmental unit which will issue the bonds (or on behalf of which the bonds are to be issued) must make a determination that the Credits to be allocated to the property do not exceed the amount necessary for the financial feasibility of the property and its viability as a qualified low-income housing property throughout the credit period.

The Fund will issue the Subsection 42(m) letter after completion of its prior to equity closing underwriting. In addition to references to the property's fulfillment of Subsections 42(m)(1)(D) and 42(m)(2)(D) of the Code, the letter will contain the amount of Credits currently anticipated to be allocated to the property. However, the amount of Credit could decrease or increase based upon Allocation Request application stage underwriting.

## Substantial Completion Requirements for Newly Constructed Buildings

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

With respect to when the newly constructed buildings in a property are considered substantially complete in order to be eligible to submit an Allocation Request, and not to establish any building's placed in service date, the Fund implements a more conservative approach than the provisions of IRS Notice 88-116 (which govern the establishment of a building's placed in service date).

A newly constructed building will be considered to be substantially complete on the date that:

- the building is 95% or more complete;
- all common areas and facilities and all residential rental units in the buildings are permanently connected to all utility services, including
  - electric/gas,
  - water,
  - sewer,
  - telephone,
  - cable; and
- there is no accessibility impediment to ingress or egress to or from
  - the property,
  - its buildings,

- units, and
- common areas and facilities.

### Definition of “Property”

*This subsection of the Manual does not apply to Tax-Exempt Bond Financed Properties.*

A “property” is defined as consisting of either a single stand-alone building that is not part of a group of multiple buildings (as described next) or a group of multiple buildings having similarly constructed housing units, located on the same tract of land, owned by the same entity for federal income tax purposes and financed pursuant to a common plan of finance.

The Fund permits only certain types of Scattered Site Properties. Permissible Scattered Site Properties are ones where

- all parcels are located within the same municipality (city or town), or
- all parcels are not located within any municipality, but all are located in the same county.

Impermissible Scattered Site Properties are ones where parcels in such property are located

- in different municipalities within the same county, or
- in a mixture of municipalities and unincorporated areas of the same county, or
- in different counties.

Any attempts to circumvent this policy will result in the rejection of each and all of the involved applications received by the Fund for each and all of the properties involved.

### Limitations on Amount of Property Allocation

*This subsection of the Manual does not apply to Tax-Exempt Bond Financed Properties.*

The Fund’s policies prohibit any reservation or allocation to any one property that exceeds ~~cumulatively, the lesser of 15% of the per capita portion of the current year State Housing Credit Ceiling or the aggregation of the corresponding applicable Credit amount~~ the Credit limit per low-income residential rental unit shown in the table below:



Bedroom Size	Per <u>Low-Income</u> Unit Credit Limits for Existing Housing Properties	Per <u>Low-Income</u> Unit Credit Limits for All Other Properties
Efficiency	\$ <u>11,100</u>	\$ <u>16,500</u>
1 Bedroom	\$ <u>13,200</u>	\$ <u>19,500</u>
2 Bedrooms	\$ <u>15,700</u>	\$ <u>23,000</u>
3 Bedrooms	\$ <u>18,600</u>	\$ <u>27,100</u>
4 Bedrooms	\$ <u>22,200</u>	\$ <u>32,000</u>

In addition, the Fund’s policies prohibit any reservation or allocation to any one property that exceeds the **greater** of the following:

- 15% of the per capita portion of the current year State Housing Credit Ceiling,  
or,
- \$754,500

As soon as it is available, the “15% amount” will be provided on the Fund website ([www.wvhdf.com](http://www.wvhdf.com)) and emailed to the Fund LIHTCP mailing list.

An Applicant can apply for additional Credits in one of the subsequent two calendar years, but no later than the placed-in-service calendar year, and only to the extent that the above stated limit for any such calendar year would not be exceeded in the aggregate.

#### Limitations on Number of Applications Submitted

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

The Fund’s policies limit the number of Pre-Registration forms and Reservation Requests per regular (non-Tax-Exempt Bond Financed) property application periods and per Tax-Exempt Bond Financed Property application period, as follows:

Description	Pre-Registration Forms	Reservation Requests
“First-time” Property Developer or General Partner	Two	One
Others	Six	Three

Pre-Registration Forms or Reservation Requests applying for an allocation of Credits from the Top Off Set-Aside Category of the current year State Housing Credit Ceiling will not count toward the above-referenced limits. A “first-time” property developer or General Partner includes any person or entity that has not placed in service an LIHTCP property located in the State and received the final Allocation Certifications for the buildings in the property.

Additionally, for a first-time property developer or General Partner, who has not placed in service an LIHTCP property located in any state and has not received the final Allocation Certifications for the buildings in the property, if selected, such developer or General Partner is not permitted to submit a Pre-Registration Form or Reservation Request in subsequent application periods until final Allocation Certifications are issued on the selected property.

Further, the Fund prohibits the submission of a Reservation Request for a Tax-Exempt Bond Financed Property by a first-time property developer or General Partner, who has not placed in service a Tax-Exempt Bond Financed Property located in any state and has not received the final Allocation Certifications for the buildings in the property.

The Fund has determined that any consultant or consulting entity which will receive 25% or more of the total Developer’s Fee is considered by the Fund to be a co-developer and is therefore subject to the above limitation. Such consultant must be listed in the WVHDF Form 1040 as a co-developer.

Any attempts to circumvent this policy will result in the rejection of each and all of the involved applications received by the Fund for each and all of the properties involved.

### Market Saturation

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

The Fund evaluates the need for new production in counties and in cities in the State. New production includes new construction or rehabilitation (with or without acquisition) involving conversion to affordable rental housing. The goals of this evaluation are to ensure the following:

- that the rental housing market for areas with new production properties recently completed or still under construction (not yet rented up) are not impaired due to the approval of additional new production properties in such areas;
- that rental housing markets are not saturated with LIHTCP units; and

- that the proportion of LIHTCP units in a county are not inappropriate as compared to the Statewide percentage.

Consequently, the Fund reserves the right to exclude areas for new production as deemed appropriate to fulfill the above-stated goals. Such excluded areas, if any are identified, would be provided via notice to the mailing list and provided on the Fund website no later than the day of the annual Application Workshop.

Additionally, as stated in the Plan, a property may be rejected if more than one property is included in the same primary market area, and it is determined that the selection of more than one property in the same primary market area would be unsustainable for market purposes.

#### Per Unit Minimum Rehabilitation

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

The Fund requires that any property involving rehabilitation incur, in the aggregate, “hard cost” rehabilitation residential rental Adjusted Basis (listed as “Rehabilitation of Existing Structures” in the property costs listed in WVHDF Form 1040) that is greater than \$25,000 per residential rental unit in any such property.

#### Property Cost Limits

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

Property costs are defined as the Total Property Costs (WVHDF Form 1040, Page 3, Part VII, Line 32, Column 1). In order to determine the reasonableness of property costs, the Fund has analyzed the total property costs of recently cost-certified LIHTCP properties in the State. Based upon this analysis the Fund will be utilizing the following property costs limits:

Bedroom Size	Property Cost Limits for Existing Housing Properties	Property Cost Limits for All Other Properties
Efficiency	\$ <u>122,835</u>	\$ <u>183,348</u>
1 Bedroom	\$ <u>146,173</u>	\$ <u>216,351</u>
2 Bedrooms	\$ <u>173,947</u>	\$ <u>255,295</u>
3 Bedrooms	\$ <u>206,996</u>	\$ <u>301,248</u>
4 Bedrooms	\$ <u>246,326</u>	\$ <u>355,472</u>

Property costs will be compared to the aggregation (based upon the property's unit composition by the number of bedrooms) of the corresponding cost limits based upon the type of property. In the event a property is in excess of the applicable property cost limit, the Applicant must submit the following:

- for the excess related to construction costs, a detailed line item cost coverage explanation including dollar amounts prepared by the general contractor, and/or
- for the excess related to intermediary costs, a detailed line item cost coverage explanation including dollar amounts prepared by the Applicant.

Note: Such explanation should detail why the property is **different** than other LIHTCP properties and therefore costlier to construct or rehabilitate. Explanations which include items which are part of a standard LIHTCP property will not be considered as justification for the excess. For example, the requirement to pay Davis-Bacon wage rates is not so unique as to constitute a justification. It is the responsibility of the Applicant to submit a detailed and thorough excess cost explanation to justify the excess property costs associated with the property.

Property costs in excess of the aggregation of the corresponding cost limits which cannot be justified (in the Fund's sole discretion) given the specific development characteristics of the property (e.g. location in a difficult development area, site conditions, prevailing wage requirements, rehabilitation to historical standards, etc.) will result in the Fund decreasing Property Costs, and therefore Adjusted Basis, Eligible Basis, Qualified Basis, and the Eligible Housing Credit Dollar Amount from those contained in the property's application, and the Housing Credit Dollar Amount Needed for the property or for each building in the property.

**A designated construction professional of the Fund will perform a construction costing of all properties that are selected to receive Credits to verify the reasonableness of the property costs.** The Fund's construction costing is solely for the Fund's use. Applicants, lenders, syndicators, tenants, and any other parties involved in any such property are not entitled to and should not rely upon or in any way utilize the Fund's construction costing for any purpose.

### Developer's Fee

*This section of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

A Developer's Fee represents compensation that is actually paid from the Ownership Entity, often over a period of time, to the individual, entity, or both, who is responsible for the development of the property including fees paid to consultants. "Development" includes the work, costs and risks associated with the development of a property.

In specifying the maximum amount of Developer's Fee that may be included in the Property Costs, Adjusted Basis, Eligible Basis, and Qualified Basis for each property

or for each building in a property, the following differentiations are taken into account:

- properties that (1) have been occupied as residential rental housing at any time during the year preceding the date of the site control document for the subject property, which is furnished with the initial Reservation Request, and those properties that (2) have not been occupied; and
- properties where (1) an identity of interest does not exist between the Principals of the property developer and the Principals of the general contractor and those properties where (2) an identity of interest does exist.

An identity of interest between the Principals of the property developer and the Principals of the general contractor is construed to exist if any of the following conditions exist:

- When there is any financial interest of a Principal of the property developer in the general contractor.
- When a Principal of the property developer is also an officer, director, owner, partner or stockholder of the general contractor.
- When a Principal of the general contractor or the general contractor advances any funds to a Principal of the property developer or the property developer.
- When a Principal of the general contractor takes any interest in the property developer as part of the consideration to be paid to the general contractor.
- When any relationship exists, which would give a Principal of the property developer or a Principal of the general contractor control or undue influence over the price of the contract, or the price paid to the subcontractor, material supplier or lessor of equipment.
- When there exists or comes into being any side deals, agreements, contracts or undertakings entered into or being contemplated between a Principal of the property developer and a Principal of the general contractor.

WVHDF Form 1040 requires the Applicant to disclose any identity of interest between any of the development team members, including the Principals of the property developer, general contractor, and General Partner.

The matrix below contains the equations to be used to determine the maximum amount of Developer's Fee that may be included in the Property Costs, Adjusted Basis, Eligible Basis, and Qualified Basis for the property or for each building in the property.

**DEVELOPER’S FEES FOR PROPERTIES THAT HAVE NOT BEEN OCCUPIED AS RESIDENTIAL RENTAL HOUSING AT ANY TIME DURING THE YEAR PRECEDING THE DATE OF THE SITE CONTROL DOCUMENT FOR THE SUBJECT PROPERTY, WHICH IS FURNISHED WITH THE INITIAL RESERVATION REQUEST**

<b>Identity of Interest Does Not Exist</b>	<b>Identity of Interest Does Exist</b>
<p><i>The Developer’s Fee included in Property Costs and Adjusted Basis must be less than or equal to:</i></p> <p>18% of Adjusted Basis*</p>	<p><i>The Developer’s Fee included in Property Costs and Adjusted Basis must be less than or equal to the lesser of:</i></p> <p>18% of Adjusted Basis*; and</p> <p>(22% of Adjusted Basis*) minus Builder’s Profit</p>

**DEVELOPER’S FEES FOR PROPERTIES THAT HAVE BEEN OCCUPIED AS RESIDENTIAL RENTAL HOUSING AT ANY TIME DURING THE YEAR PRECEDING THE DATE OF THE SITE CONTROL DOCUMENT FOR THE SUBJECT PROPERTY, WHICH IS FURNISHED WITH THE INITIAL RESERVATION REQUEST**

<b>Identity of Interest Does Not Exist</b>	<b>Identity of Interest Does Exist</b>
<b>Acquisition</b>	<b>Acquisition</b>
<p><i>The Developer’s Fee included in Property Costs and Adjusted Basis must be less than or equal to:</i></p> <p>10% of Acquisition Adjusted Basis*</p>	<p><i>The Developer’s Fee included in Property Costs and Adjusted Basis must be less than or equal to:</i></p> <p>10% of Acquisition Adjusted Basis*</p> <p><u>Note:</u> Acquisition Developer’s Fee is only includable in property costs and adjusted basis if Acquisition credit is being requested for the Property.</p>
<b>Substantial Rehabilitation</b>	<b>Substantial Rehabilitation</b>
<p><i>The Developer’s Fee included in Property Costs and Adjusted Basis must be less than or equal to:</i></p> <p>15% of Substantial Rehabilitation Adjusted Basis*</p>	<p><i>The Developer’s Fee included in Property Costs and Adjusted Basis must be less than or equal to the lesser of:</i></p> <p>15% of Substantial Rehabilitation Adjusted Basis*; and</p> <p>(18% of Substantial Rehabilitation Adjusted Basis*) minus Builder’s Profit)</p>

\* Adjusted Basis, which by definition excludes land and any other costs which are not capitalized and depreciated, and which, for the purposes of the Developer’s Fee formulas provided above also excludes property costs in excess of the Fund property cost limits, and the Developer’s Fee itself.

The maximum Developer’s Fee is further limited to the amount of Developer’s Fee that is actually paid, or otherwise earned or recognized as income, from one unrelated individual, entity, or both to another individual, entity, or both as compensation for the work, costs and risks associated with the development of a property.

The equations used to determine the maximum amount of Developer's Fee apply to the total of the amounts listed in the application for Developer's Fee, and to any separately-listed Consultant's Fees or other costs relating to the development work and costs associated with the development of a property.

In the event the total of the amounts listed in the WVHDF Form 1040 (for the property) and Schedule A to WVHDF Form 1040 (for each building in the property) for Developer's Fee and for any separately-listed Consultant's Fees or other costs related to the development work and costs associated with the development of a property exceed the applicable limit, the Fund will make a corresponding reduction in each such property's or building's allowed Property Costs, Adjusted Basis, Eligible Basis, Qualified Basis, and, therefore, Eligible Housing Credit Dollar Amount and the Housing Credit Dollar Amount Needed. In the event the Partnership Agreement and/or construction documents contemplate a construction management fee or similar fee which is paid to the property developer for unused construction contingency, such fee will be taken into account when determining if the Developer's Fee exceeds the applicable limit.

In order for the Developer's Fee to be eligible for inclusion in Property Costs, Adjusted Basis, Eligible Basis, and Qualified Basis, the payment, recognition, and taxation of the Developer's Fee must comply with IRS requirements.

Additional restrictions on Developer's Fee and restrictions on deferred Developer's Fee:

- The Fund will **not** approve an increase in the Developer's Fee above the amount included in the WVHDF Form 1040 submitted and approved during the Carryover Allocation Request application stage, regardless of changes to property costs.

Note: The Developer's Fee may be decreased at the Allocation Request application stage. This could be due to, among other causes, (1) actual CPA cost-certified Property Costs and Adjusted Basis being less than the anticipated Property Costs and Adjusted Basis included in the WVHDF Form 1040 submitted during the Carryover Allocation Request application stage, or (2) property costs exceeding Fund Property Cost Limits above what was anticipated at the Carryover Allocation Request application stage. If a decrease in Developer's Fee is warranted based upon a property's final Property Costs and Adjusted Basis, the Developer's Fee amount must be reduced and the lower amount reflected in an updated CPA Cost Certification.

- The Fund may determine during underwriting that based upon the financial characteristics of a property, it cannot sustain the full amount of Developer's Fee requested, even though the amount requested is within the limits contained in the Manual. Prior to making any adjustments to the Developer's Fee, the Fund would discuss the reduction with the Applicant.

- If a state-designated basis boost is being requested for a property, a minimum deferred Developer's Fee will be required as set forth in the Allocation Policies, State Designated Basis Boost subsection of the Manual.
- If HOME or HTF or ERA2 Housing Fund financing or any other Fund-provided soft source (whether fully amortizing or not) is being requested by a property, a minimum deferred Developer's Fee will be required in the same manner as set forth in the Allocation Policies, State Designated Basis Boost subsection of the Manual.
- Up to 50% of the Developer's Fee can be deferred if the property's cash flow evidences that the deferred Developer's Fee can be paid within 15 years of placement in service. The Fund may permit a deferred Developer's Fee above the 50% limit, but only in limited circumstances and only if the property's cash flow evidences the above-referenced 15-year repayment requirement.
- Regardless of the percentage of Developer's Fee deferred, the Fund will ensure a property's cash flow projections (using standard underwriting assumptions) support the reasonable expectation that the deferred Developer's Fee can be paid within 15 years of placement in service. If the property's cash flow does not evidence the ability to pay the planned deferred Developer's Fee within the 15 years, the Developer's Fee will be reduced (lower use of funds) accordingly, and as a result, the deferred Developer's Fee will be reduced (lower source of funds) to an acceptable amount. A deferred Developer Fee cannot be classified as a General Partner capital contribution in order to circumvent this policy.

### Contingencies and Construction Change Orders

*This section of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

The Fund does not permit a contingency to be included **within** a property's construction estimate or construction contract, unless such contingency is required in writing by HUD, another governmental agency, or an independent third party. However, a construction contingency may be included in the estimated property costs listed in WVHDF Form 1040, as follows:

- For new construction or rehabilitation properties – no higher than 75% of hard costs (excludes off-site improvements)
- For ~~rehabilitation or~~ adaptive re-use properties – no higher than 10% of hard costs (excludes off-site improvements)

The Fund will permit a 5% contingency on soft costs. However, such soft cost contingency may be disallowed where there is minimal or no deferred Developer's Fee.



When a modification to the construction contract is requested **OR** if any budgeted contingency (if required in writing by HUD, another governmental agency, or an independent third party) within the construction contract is utilized, **regardless of the funding source for the related construction draw**, the Fund must receive an AIA G701 Change Order form executed by the Property Architect, Property Contractor, and Owner, which includes the justification for such change order. Each change order, including zero-dollar change orders, should be submitted within 45 calendar days after the occurrence of the event giving rise to such change order and must be reviewed and approved by the Fund.

All requests for a change order to be reviewed and approved by the Fund, must be submitted via an email to [changeorders@wvhdf.com](mailto:changeorders@wvhdf.com). The email should include the following:

- The AIA G701 Change Order form executed by the Property Architect, Property Contractor, and Owner.
- A clear explanation for what necessitated the change order and why the work was not contemplated in the original contract.
- A detailed explanation of how the change order amount was calculated including a detailed break-down of costs.
- All backup documentation (invoices, timesheets, etc.).

**Note: If a property's change orders include an addition of builder's line items to positive change orders, negative change orders must similarly include a reduction of builder's line items.**

**Failure to submit change orders within the 45 calendar days will not automatically negate the Carryover Allocation Certificate, but may result in the Fund disallowing such additional costs which would result in the Fund decreasing Property Costs, and therefore Adjusted Basis, Eligible Basis, Qualified Basis, and the Eligible Housing Credit Dollar Amount from those contained in the property's application, and the Housing Credit Dollar Amount Needed for the property or for each building in the property.**

### Builder's Line Items

*This section of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

The table below will be used to determine the maximum amount of builder's line items that may be included in the Property Costs, Adjusted Basis, Eligible Basis, and Qualified Basis for the property or for each building in the property. These percentages are to be applied to the Adjusted Basis of the hard construction costs (plus demolition, if applicable). Hard construction costs generally include demolition, on-site land improvements, off-site land improvements, and new structures

construction costs or rehabilitation of existing structures construction costs, but only to the extent that such costs are part of the construction contract. Regardless of whether or not a contingency is included within the construction estimate or construction contract, the Fund does not allow Builder's Line Items to be calculated on a construction contingency.

Builder's Line Item Description	Percentage of the Adjusted Basis of the Hard Construction Costs
Builder's General Requirements	6%
Builder's General Overhead	2%
Builder's Profit	6%
Total Builder's Operating Cost and Profit	14%

Builder's General Requirements consist of items and resources needed for completion of the property that will not be part of the finished product that is turned over to the Owner. Builder's General Requirements will vary due to property type, location, and site conditions. This category generally includes but is not limited to supervision, job site engineering, job office expenses including clerical wages, whether on-site or offsite, if for the property, temporary buildings, tool sheds, shops and toilets, temporary heat, water, light and power for construction, temporary walkways, fences, roads, siding and docking facilities, sidewalk and street rental, construction equipment rental not in individual trade item costs, clean-up and disposal of construction debris, medical and first aid supplies and temporary facilities, watchman's wages, security cost and theft and vandalism insurance signage or other barriers. Pre-construction costs such as bidding are part of Builder's General Requirements and must be included within that amount and cannot exceed the percentage above.

Builder's Overhead consists of a general contractor's costs associated with a new construction or rehabilitation project that does not include the direct cost of wages or materials.

Builder's Profit means the return anticipated for providing building construction services under competitive conditions taking into consideration on-site construction time, work performed by the builder, number of subcontractors and extent of subcontract work and risk and responsibility.

Applicants must provide in the WVHDF Form 1040 (for the property) and Schedule A to WVHDF Form 1040 (for each building in the property) the amounts for Builder's General Requirements, Builder's General Overhead, and Builder's Profit.

In the event any of the amounts listed in the WVHDF Form 1040 (for the property) and Schedule A to WVHDF Form 1040 (for each building in the property) for

Builder's Requirements, Builder's General Overhead, and Builder's Profit exceed the applicable limit, the Fund will make a corresponding reduction in each such property's or building's allowed Property Costs, Adjusted Basis, Eligible Basis, Qualified Basis, and, therefore, Eligible Housing Credit Dollar Amount and the Housing Credit Dollar Amount Needed.

### Cost Certification Requirements

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

The Fund recognizes two types of Cost Certifications, one prepared and certified by the Owner, or an authorized representative thereof ("Owner's Cost Certification"), and one examined and certified by an independent Certified Public Accountant ("Independent CPA Cost Certification and Examination").

#### Owner's Cost Certification

WVHDF Form 1040 (on a property basis) and Schedule A to WVHDF Form 1040 (on a building by building basis) constitute an Owner's Cost Certification. The WVHDF Form 1040 and each Schedule A to WVHDF Form 1040 are to be prepared based on the method of accounting used by the Owner for federal income tax purposes. The WVHDF Form 1040 and Schedule A to WVHDF Form 1040 must detail the property's total costs as well as those costs that qualify for inclusion in Eligible Basis under Subsection 42(d) of the Code. WVHDF Form 1040 is a required document for any application for Credits and Schedule A to WVHDF Form 1040 for each building in the property is a required document for an Allocation Request. There are three stages of application through which a property is processed – Reservation Request, Carryover Allocation Request, and Allocation Request.

At the Reservation Request and Carryover Allocation Request application stages, the amounts listed and certified to by the Owner as the Property Costs and Residential Rental Adjusted Basis are the Owner's **best estimate**, at the time such Request is prepared, of what the actual final Property Costs and Residential Rental Adjusted Basis will be for the property. At the Allocation Request application stage, the amounts listed and certified by the Owner as the Property Costs and Residential Rental Adjusted Basis are the **actual final** Property Costs and Residential Rental Adjusted Basis incurred by the Owner for each building in the property.

The Fund will verify the mathematical and logical accuracy of the Owner's Cost Certification of Property Costs and Residential Rental Adjusted Basis (contained in WVHDF Form 1040 (for the property) and Schedule A to WVHDF Form 1040 (for each building in the property), at each applicable application stage. The Fund's review of the WVHDF Form 1040 and Schedule A to WVHDF Form 1040

is solely for the Fund's use. Applicants, lenders, syndicators, tenants, and any other parties involved in any such property are not entitled to and should not rely upon or in any way utilize the Fund's review of the WVHDF Form 1040 and Schedule A to WVHDF Form 1040 for any purpose.

The Fund will also reconcile the Residential Rental Adjusted Basis contained in the WVHDF Form 1040 (for the property) and Schedule A to WVHDF Form 1040 (for each building in the property) to the corresponding Residential Rental Property Costs contained in the WVHDF Form 1040 (for the property) and Schedule A to WVHDF Form 1040 (for each building in the property) at each applicable application stage.

### Independent CPA Cost Certification and Examination

In connection with an Owner's submission and the Fund's evaluation and processing of an Allocation Request for any property, the Owner must obtain and submit an originally signed Independent CPA Cost Certification and Examination report at the time the Allocation Request is submitted to the Fund. The Independent CPA Cost Certification and Examination report must include all final property costs and be in the format prescribed by the Fund, which is attached as Exhibit C to the Manual. The Fund has also prescribed the format in which the property's final sources and uses of funds must be presented. The prescribed format is Schedule D to WVHDF Form 1040. The Schedule D must be accompanied by the Independent CPA Cost Certification and Examination report referred to above.

The Independent CPA Cost Certification and Examination must be prepared in conformity with the accounting practices prescribed by the IRS, under the method of accounting used by the Owner for federal income tax purposes, and in conformity with the prescribed format (Schedule D) set by the Fund. The auditor's report must be unqualified and must address all items required in the regulations. The Fund will review the Independent CPA Cost Certification and Examination report to determine that these requirements are met.

In order to reflect all final costs, any construction financing must be repaid so that Construction Loan Interest can be properly included. Any temporary reserves, such as a "90/90 Reserve" which is refunded after 90 calendar days of 90% occupancy is not considered a property cost and therefore, should not be reflected as a use of funds in the Independent CPA Cost Certification and Examination.

In the event an interested party imposes any requirement for an audit, examination, and/or cost certification of development costs, including but not limited to a federal audit, examination, and/or cost certification, a copy of any such audit, examination, and/or cost certification must be submitted to the Fund in connection with the submission of any such property's Allocation Request.

The Fund reserves the right to require additional cost certification due diligence for developments with related parties at the developer, general contractor, or subcontractor level, or for any other developments that the Fund judges to be high risk. This additional due diligence may include audits of general contractors and/or sampling of subcontractor invoices to verify consistency with the developer cost certification.

### Syndication Costs, Net Syndication Proceeds, and Fund Syndication-Related Requirements

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

Syndication costs represent those costs incurred by the syndicator in connection with obtaining investors for a property. Syndication costs are normally items incurred for the packaging of an investment unit and the promotion of the investment unit, including any marketing of the actual units, the production of any offering memoranda or promotion materials, the mobilization of any brokers/dealers who sell the investment units, and actual sales commissions paid to the sellers of such investment units. Accordingly, syndication costs are not considered to be Property Costs and, therefore, are not eligible for inclusion in the Property Costs, Adjusted Basis, Eligible Basis, or Qualified Basis for LIHTCP purposes.

Syndication costs are paid for out of the gross syndication proceeds raised from the investors. Accordingly, there is a direct and inverse relationship between the syndication costs and the net syndication proceeds available to fund Property Costs. The Fund wants each of its LIHTCP properties to maximize the net syndication proceeds available to fund Property Costs. As a result, the Fund is interested in the amount of syndication costs incurred.

Syndication costs for a **private placement** should not exceed 15% of the gross syndication proceeds generated by virtue of such investment in the property. Syndication costs for a **public offering** should not exceed 25% of the gross syndication proceeds generated by virtue of such investment in the property.

The Fund recognizes that it does not have the ability to participate in the negotiation of the syndication arrangement between the developer and the syndicator for a property. Accordingly, in the event the syndication costs for a property are in excess of the amount determined based upon the applicable percentage stated above, the Fund will increase the net syndication proceeds available to fund property costs in an amount equal to the amount by which the syndication costs exceed the amount determined based upon the applicable percentage stated above, for the purposes of the LIHTCP housing credit need evaluation.

Once the Reservation Requests for the current year have been submitted, the Fund will review the entire universe of syndication proposals and determine the range of

prices provided. In general, the Fund will use the syndication price indicated in the syndication proposal submitted with a property's Reservation, Carryover Allocation, or Allocation Request for the purpose of the Fund's housing credit need evaluation, unless such price is deemed to be substantially lower than the range of prices provided.

As referenced in the Prior to Equity Closing section of the Manual, as soon as it is available (preferably prior to issuance of a property's Carryover Allocation Certificate), but no later than 15 Business Days prior to equity closing, the equity syndicator must provide, and the Applicant must submit

- a Prior to Equity Closing Summary of Equity Syndicator-Required Reserves (LIHTCP-M) which summarizes information regarding **each of the reserves required by the Partnership Agreement**, and
- a Prior to Equity Closing Summary of Equity Syndicator Required-Fees which summarizes information regarding **each of the fees required by the Partnership Agreement**.

**Important Note:** Any capitalized or expensed reserve account included in the property's application must be defined in the Partnership Agreement. Any funds remaining in such reserve account at the end of the Compliance Period or sale of the property, whichever is earlier, must be used to either reduce any outstanding debt on the development, or must remain with the property to fund capital improvements, maintenance and repairs, or operating shortfalls of the property. Additionally, any reserve that is temporary or is structured to be disbursed as part of a cash flow waterfall or that has contradictory language to the aforementioned Fund-required language will not be recognized as an allowable property cost for the purpose of calculating Credit need.

**Important Note:** The Fund will not release a property's Allocation Certifications until all final costs are determined including construction loan interest. The equity pay-in schedule should take this requirement into consideration. As an example, a scheduled pay-in needed in order to pay off the construction loan should not be contingent upon the property's receipt of Allocation Certifications from the Fund.

### Organizational Costs

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

Organizational costs are costs that include the legal and accounting costs necessary to organize the Ownership Entity and the costs necessary to facilitate the filings of the necessary legal documents and other regulatory documentation required by federal and state law. These costs are separate from syndication costs, are includable in Property Costs, but are not eligible for inclusion in Adjusted Basis, Eligible Basis, or Qualified Basis for LIHTCP purposes.

## Falsification of Documents

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

Evidence of falsification of any documents submitted for any Fund program is grounds for rejection of an application and possible prohibition of future applications.

## Major Changes to a Selected Property

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

The Fund must be notified of any and all major changes to any selected property. Such major changes require approval by the Fund and will be reviewed by the Fund for such approval on a case-by-case basis in the Fund's sole discretion. If the Fund is not notified of such changes, the Fund reserves the right to reduce or revoke such application's allocation of Credits.

Examples of major changes include, but are not limited to, a change in the number of units, a change in the number of buildings, adding historic tax credit equity to the property, a change in the Ownership Entity structure (including, but not limited to, changes to the General Partner or ownership/control of the General Partner), a change in the character (low-income, market rate, commercial) of one or more units, or a substantial change (in excess of 10%) in the construction costs or total property costs. If an Applicant is unsure if the Fund would consider a specific change to be major, the Fund highly recommends erring on the side of caution and informing the Fund.

## Maintenance of Continuous Site Control

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties.*

Once the Reservation Request has been submitted to the Fund, the Ownership Entity must have and continuously maintain control of the site and existing buildings, if any, for the subject property in the form of a deed, option or purchase contract, an option to enter into a Long-Term Lease, or a Long-Term Lease in the name of the Ownership Entity. Note: For properties that are not initially selected to receive Credits during an application period, but choose to be wait-listed, the site control must be maintained until such property has been removed from the waiting list.

In the event the Ownership Entity loses site control of all or part of the site after the Reservation Request has been submitted to the Fund, the application for the

property, regardless of stage of processing, will be automatically rejected and any documents entered into for such property or for the buildings in any such property will be automatically canceled.

In limited circumstances, the Fund may permit, on a case-by-case basis, additional parcel(s) of land to be added to a property. The Applicant must notify the Fund in writing and receive Fund approval prior to additional parcels being acquired.

**The Fund believes that the location of the site is so integral to the acceptance and scoring of a property that the Fund will not consider a site change once a property's Reservation Request has been submitted, unless it is directly responsive to provide replacement housing only in the event of a federally declared disaster.**

### State-Designated Basis Boost

*This subsection of the Manual does not apply to Tax-Exempt Bond Financed Properties since such properties are not eligible to receive a state-designated basis boost.*

Subsection 42(d)(5)(B)(v) of the Code authorizes the Fund to award up to a 30% basis boost to any building that the Fund determines needs such basis boost to be financially feasible as part of a qualified low-income housing property. Unless the Fund declares otherwise in a separate notice, the state-designated basis boost is available in any county in the State pursuant to Subsection 42(d)(5)(B)(v) (as referenced in the following section), which is not otherwise eligible for a basis boost as permitted under Subsection 42(d)(5)(B)(ii) and (iii).

**Guiding principle for awarding the state-designated basis boost: The basis boost must be considered necessary for the financial feasibility of the property.**

The following items need to be considered reasonable for a property to be considered for the state-designated basis boost as permitted under Subsection 42(d)(5)(B)(v) of the Code:

- Per Credit equity price
- Total property costs
- Band of affordability for 60% units
- Vacancy percentage (from 5% to 7%)
- Other income
- Operating expenses per unit per annum
- Replacement reserve
- Repayment terms and interest rate on permanent financing
- Cash flow



- Debt Service Coverage Ratio (normally 1.25 to 1.30 or slightly lower for properties which have 50% or greater project-based rental subsidy)
- Deferred Developer's Fee. Generally, in order to be considered for a boost in basis, the required deferred Developer's Fee is 20% of the total allowed Developer's Fee. Only in the event the property's operating pro-forma does not show the ability to repay the required deferred Developer's Fee out of available cash flow will the Fund consider a deferred Developer's Fee of less than the required amount. The purpose of the boost in basis is not to ensure 100% of the Developer's Fee at the end of construction or shortly thereafter. If the developer is requesting less than 100% of the allowed Developer's Fee for the property (see the Allocation Policies, Developer's Fee section of the Manual), such reduction will be considered a portion of the required deferral.

Following are three examples demonstrating the calculation of the required Developer's Fee deferral.

Example	Item A	Item B	Item C	Required Deferred Developer's Fee**
	Allowed Total Developer's Fee*	Property's Actual Total Developer's Fee	Difference of Item A and Item B	
A	\$100,000	\$100,000	\$0	\$20,000
B	\$100,000	\$90,000	\$10,000	\$8,000
C	\$100,000	\$80,000	\$20,000	\$0

\* Per the Developer's Fee matrix included in the Allocation Policies, Developer's Fee section of the Manual.

\*\* Calculation: The greater of [(Item B times 20%) less Item C] or zero.

**Fund Underwriting Analysis**

*This subsection of the Manual applies to all properties including Tax-Exempt Bond Financed Properties, except for references to the Carryover Allocation provisions.*

Subsection 42(m)(2)(A) of the Code requires that the housing credit dollar amount allocated to a property not exceed the amount that the allocating agency determines is necessary for the financial feasibility of the property and its viability as a qualified low-income housing property throughout the Credit Period. In making this determination of the housing credit dollar amount necessary, the allocating agency is required to consider the following in accordance with Subsection 42(m)(2)(B):

- the sources and uses of funds and the total financing planned for the property,
- any proceeds or receipts expected to be generated by reason of tax benefits,

- the percentage of the housing credit dollar amount used for property costs other than the cost of intermediaries, and
- the reasonableness of the developmental and operational costs of the property.

Consideration of the percentage of the housing credit dollar amount used for property costs (other than the cost of intermediaries) shall not be given so as to impede the development of properties in hard-to-develop areas. Subsection 42(m)(2)(B) of the Code also provides that “such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project”.

Subsection 42(m)(2)(C) of the Code also requires that the Fund analyze the property and make a determination of the amount of housing credit dollar amount necessary as of each of the following times:

- The application for the housing credit dollar amount (Reservation Request).
- The allocation of the housing credit dollar amount (Carryover Allocation Request).
- The date the building is placed in service (Allocation Request).

The basic underwriting spreadsheets that the Fund utilizes to complete the required analysis (underwriting) at each of the above-referenced application stages are attached as Exhibit D to the Manual, copies of which may be found on the Fund website ([www.wvhdf.com](http://www.wvhdf.com)) or by contacting the Fund at 1-800-933-9843.

### **QUALIFIED CONTRACT REQUEST PROCEDURE**

*All of the provisions of the Qualified Contract Request Procedure section apply to all properties including Tax-Exempt Bond Financed Properties.*

A qualified contract is a bona fide contract to acquire (within a reasonable period after the contract is entered into) the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the Regulatory and Restrictive Covenants for Land Use Agreement) of the sum of (i) the outstanding indebtedness secured by the building, (ii) the adjusted investor equity in the building, and (iii) other capital contributions, reduced by cash distributions from or available for distribution from the property. A request for a qualified contract allows eligible Owners of properties receiving Credits to exit the LIHTCP after the end of the initial 15-year Compliance Period. The following procedure sets forth the terms and conditions Owners must follow to allow the Fund to administer qualified contract requests (“Requests”). A qualified contract is not available, and this procedure is not applicable, to an Owner that waived its right to request a qualified contract in the Regulatory and Restrictive Covenants and Land Use Agreement between the Owner and the Fund.

## Time of Request

An eligible Owner of a property utilizing Credits may request a qualified contract pursuant to Subsection 42(h)(6)(E) of the Code for the acquisition of the low-income portion of the property any time after the last day of the fourteenth (14<sup>th</sup>) year of the Compliance Period. Generally, the Fund has one year from the date it notifies the Owner that it has all of the required information it needs to process the request. This one year time period may be extended as set forth below.

## Qualified Contract Notification Letter

To begin the Request process, an Owner must submit a Qualified Contract Notification Letter (the “Notification Letter”) to the Fund. The form of the Notification Letter may be obtained by contacting the Fund at 1-800-933-9843. This notice will not bind the Owner to submit a Request and does not start the one-year period for response from the Fund. The Notification Letter must address the following minimum criteria for eligibility to request a qualified contract.

- That the Owner did not waive its right to request a qualified contract in the Regulatory and Restrictive Covenants for Land Use Agreement.
- That the property has completed the fourteenth (14<sup>th</sup>) year of its Compliance Period.
- That the property is in compliance with all of the requirements of Section 42 of the Code.
- That the Owner has secured complete, unconditional waivers of all purchase options, including any rights of first refusal relating to the property.
- That the Owner has not requested a qualified contract on the property in the past. The Owner may only request one (1) qualified contract per property.

In addition to the minimum eligibility requirements set forth above, the Notification Letter must include the following commitments and certifications from the Owner:

- That the Owner has not been notified of any audit or investigation or disallowance pertaining to Section 42 of the Code by the IRS, OR the Owner must provide any copies of IRS audit findings or disallowances which it has received during the Compliance Period.
- That all information submitted with the Notification Letter is accurate and complete.

- That the Owner is and will be solely responsible for all documents and information provided to the Fund and to prospective purchasers in connection with the Request.
- That the Owner agrees to cooperate with the Fund and its agents to present a qualified contract for purchase of the property. This may include providing copies of additional rent rolls, property tax returns, income certifications, repair and maintenance records, operating expenses and debt service information, and other due diligence documents. The Fund may, in its sole discretion, suspend the one-year time frame for presenting a qualified contract while waiting on such items.
- That the Owner agrees to provide access to the property for inspection by the Fund, its agents, and prospective purchasers.
- That the Owner agrees to indemnify, defend, and hold the Fund harmless with respect to the use of any information submitted.

Upon review of the Notification Letter, the Fund will notify the Owner in writing of its eligibility to submit a Request. The Fund will include instructions for submitting the request and will provide the Owner with a form reimbursement agreement.

### Qualified Contract Request

If the Owner is notified that it is eligible to request a qualified contract, it must submit its Request by providing the following documentation to the Fund. The one-year period does not start until the Owner submits all required documents to the satisfaction of the Fund.

- A cover letter indicating the intentions of the Owner along with a fully completed “Calculation of Qualified Contract Price,” (“QCP”) including Worksheets A-E. These worksheets may be obtained by contacting the Fund at 1-800-933-9843. These forms must be accompanied by a signed letter from a Certified Public Accountant stating the name of the property and that he or she is an independent third-party Certified Public Accountant who is not an employee, officer, partner, member or shareholder of the Owner. The letter must further state that the calculation of the QCP has been completed, or reviewed and approved in accordance with 26 CFR Part 1, Section 1.42-18, published May 3, 2012 (77 Fed. Reg. 26175), or its appropriate successor. The letter must also state the determined QCP.
- All fees referenced below in the Fee section.
- All IRS Forms 8609 related to the property, showing part II completed.

- Annual audited financial statements for the three most recent years of property operation.
- Annual partnership or Ownership Entity tax returns for the most recent five years of the property's operations.
- Loan documents for all secured debt during the Compliance Period (and evidence that the Owner is in good standing, is not in default; and is not aware of any event, which but for the passage of time, would constitute default under the outstanding loan agreement and/or deed of trust encumbering the real property).
- Partnership Agreement, with all amendments.
- Evidence of consent of all partners or members and lenders to seek a qualified contract (or evidence that consent is not necessary).
- Any third party bona fide offers to purchase the property received within one year prior to the date of the Request.
- Title search showing all outstanding liens and encumbrances on the property.
- An executed Reimbursement Agreement.

#### Qualified Contract Request Fees

The Fund will assess the Owner a \$3,500 non-refundable administration fee for processing a Request. The non-refundable fee may be adjusted for properties of five units or less. In addition to the administration fee, the Owner must execute an agreement to reimburse the Fund for all costs and must also deposit with the Fund \$1,000 per unit up to a maximum of \$30,000 to cover anticipated third party costs. This deposit may be used by the Fund to pay for such third party costs as:

- A physical needs assessment of the property;
- An appraisal of the property;
- A market study of the property;
- A Phase I environmental study and, if necessary, a Phase II environmental study;
- An accountant to confirm the QCP; and
- Legal fees.

These fees must be paid to the Fund at the time of the submission of the Request. If third party costs exceed the original deposit from the Owner, the Fund shall make a request for additional deposits. The processing of the Request will be suspended during any time an additional deposit has been requested from the Owner until such funds have been received by the Fund. If requested funds are not received within 15 calendar days of notice to the Owner, the processing of the Request will

be terminated. Suspension in accordance with this paragraph or any requirement set forth herein shall also suspend the one-year time period for the Fund to present a qualified contract. Any amount of the deposit remaining upon sale of the property will be returned (without interest) to the Owner.

Notwithstanding the foregoing, the Fund is not obligated to obtain any of the third party reports described above, and the Fund will make no representations or warranties to any prospective purchaser of the property.

### Presentation of a Qualified Contract

The Owner and the proposed buyer are free to negotiate different transaction terms prior to closing.

Under Subsection 42(h)(6)(E)(i)(II) of the Code, the Fund's only obligation is to "present" to the Owner a bona fide contract signed by a prospective buyer to acquire the Owner's property for the QCP ("the Contract"). The Contract will include basic real estate transaction terms and will be as close to a contingency free contract as possible. When the Fund presents the Contract to the Owner, regardless of whether the Owner rejects or fails to act upon the Contract, any possibility of the Extended Use Period being terminated prior to its scheduled termination date as provided in the Regulatory and Restrictive Covenants for Land Use Agreement is forever nullified, and the property remains subject to the existing commitments of and provisions in the Regulatory and Restrictive Covenants for Land Use Agreement. Whether or not the Owner actually executes the Contract and closes the transaction is a separate, legally unrelated question.

By submitting a Request, the Owner grants the Fund the authority to market the property and to provide applicable information to interested parties. Any and all information, including property financial and operating data, and partnership financial statements and tax returns, may be provided to third parties or otherwise used by the Fund as it deems appropriate in its discretion. The Fund must have continuous cooperation from the Owner throughout the marketing and sale period. Lack of cooperation will cause the processing of the Request to be terminated.

In the event processing of a Request is suspended or terminated for any reason, the property must continue to be maintained and operated under the Regulatory and Restrictive Covenants for Land Use Agreement.

### Three-Year Period

If the Fund fails to present a qualified contract before the expiration of the one-year period (or such longer period as occurs in accordance with the Qualified Contract Request Procedure described herein or as the Owner may agree to in writing), the Extended Use Period for the property will terminate. However, the property will remain subject to the requirements set forth in Subsection 42(h)(6)(E)(ii) of the

Code, which provides that for a three-year period commencing on the termination of the Compliance Period, the Owner may not (i) evict or terminate a tenancy (other than for good cause) of an existing tenant of any low-income unit; or (ii) increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code.

### **OTHER MATTERS**

*All of the provisions of the Other Matters section apply to all properties including Tax-Exempt Bond Financed Properties.*

The Fund reserves the right to change or modify the Manual from time to time, possibly without notice. The Fund will notify the Fund LIHTCP mailing list and post such changes or modifications to the Fund website ([www.wvhdf.com](http://www.wvhdf.com)).