

STATE OF RHODE ISLAND  
2021 QUALIFIED ALLOCATION PLAN



**State of Rhode Island**  
**2021 Qualified Allocation Plan**  
**For the Low-Income Housing Tax Credit (“LIHTC”) Program**

INTRODUCTION

RIHousing has been designated the responsibility for administering the federal Low-Income Housing Tax Credit (“LIHTC”) Program (the “LIHTC Program”) for the State of Rhode Island. The LIHTC Program was created pursuant to the Tax Reform Act of 1986 to encourage private sector participation in the construction and rehabilitation of housing for low-income individuals and families. The Omnibus Budget Reconciliation Act of 1989 required states to adopt consistent and objective procedures for allocating LIHTCs to qualified developments. Specifically, federal law requires that a Qualified Allocation Plan (the “Allocation Plan”) outlining the process for the allocation of LIHTCs be presented to the public through a hearing for review and comment. Input from the public hearing and comment period as well as all available housing needs data must be considered in the establishment of a final Allocation Plan to be approved and executed by the Governor.

RIHousing has developed this Allocation Plan to comply with the requirements of Section 42 of the Internal Revenue Code (the "Code") and to ensure that those developments receiving LIHTCs produce or preserve housing which helps to reduce the most pressing housing needs of the State. This Allocation Plan establishes the priorities that the LIHTC Program will address from among those needs and incorporates those priorities into the criteria used to evaluate all proposals. This Allocation Plan will cover the 2021 allocation year.

All provisions of this Allocation Plan apply to the total amount of LIHTCs that the State of Rhode Island is authorized to allocate at any time, including projects applying for the four percent LIHTC in conjunction with tax-exempt financing that is subject to the private activity bond cap.

For 2021, the LIHTC continues to be the primary funding source for the development of affordable rental homes in Rhode Island. As other resources become scarcer, the value and importance of the LIHTC increases. Developers must identify and obtain additional resources from federal, state, local and private partners to maximize the value of the LIHTC. RIHousing will award credits to developments that best meet the priorities of the QAP and best use the LIHTC to achieve those goals.

## **I. LIHTC PROGRAM SUMMARY AND REQUIREMENTS**

### **A. Overview**

The LIHTC Program was established as part of the Tax Reform Act of 1986 to provide an incentive to developers to produce and maintain rental housing units for low-income individuals and families. There are three types of credits available to Developers of affordable rental housing. The first type of credit is a 9% annual credit for the costs of new construction or substantial rehabilitation of an existing building. The second type of credit is a 4% (approximate) annual credit for the cost of acquiring an existing building that involves substantial rehabilitation. Both the 9% and this 4% credit are part of the state's annual per capita allocation. The third type of credit is a 4% (approximate) annual credit for the costs of new construction or substantial rehabilitation, including acquisition, of an existing building and is made available through the issuance of tax-exempt bonds. A specific project may qualify for one type of credit or for a combination of the 4% and 9% credits. However, 9% credits cannot be combined with tax-exempt bonds in one transaction.

The 9% credit percentage is permanently fixed at 9%. The 4% credit fluctuates based upon market conditions. The actual LIHTC rates ("Applicable Credit Percentage") applicable in any month are based on monthly prevailing interest rates that are calculated and published by the United States Department of the Treasury. The amount of the annual credit is calculated to yield a present value of 30% of the 4% credit for certain eligible costs.

For further information and detailed requirements relating to the different credit types and methods of calculating the credit, refer to Section 42 of the Code.

### **B. Rhode Island Annual LIHTC Allocation Pool**

Each state is awarded a limited amount of LIHTCs annually. Rhode Island will receive the small state minimum or approximately \$3,220,000 for 2021, indexed for inflation. The pool of LIHTCs may be greater in any year if unused credits are carried forward or if previously allocated credits are returned or rescinded.

### **C. LIHTC Requirements**

The Code requires that RIHousing establish a plan which sets forth the selection criteria which will be considered in allocating LIHTCs in Rhode Island. The allocation plan must include certain statutorily mandated selection criteria outlined below. The allocation plan must also outline criteria that are used to meet State and local housing needs in Rhode Island. That criteria is included within the Threshold and Scoring Criteria of this Allocation Plan.

## **1. Federal Criteria**

The Code at Section 42(m)(1)(B)(ii)(III) requires that a preference for an allocation of credits must be given to developments serving the lowest income residents, developments which commit to the longest period of affordability, and developments located in a qualified census tract ("QCT"). Because placing LIHTC projects in a QCT risks exacerbating concentrations of poverty, the QCT preference will only be given when there is an added benefit to the neighborhood in the form of the project's contribution to a concerted community revitalization plan ("CCRP"), as outlined in Section III B. of the Allocation Plan, Scoring Criteria, under Comprehensive Community Development.

A CCRP is a formal plan which may include but is not limited to (i) a description of the geographic scope of the community and provides a clear direction for implementation; (ii) demonstrates the need for revitalization; (iii) includes a strategy for obtaining commitments of public and private investment in non-housing infrastructure, amenities, or services beyond the development; and (iv) includes planning document elements such as setting goals for outcomes, identifying barriers to implementation, establishing timelines and benchmarks, and identifying community partners.

A plan will not be considered a CCRP if RIHousing determines, in its sole discretion, that the plan focuses narrowly on a "single property," or that the plan was approved solely for the awarding of CCRP points.

The following 10 additional statutory requirements are included in the various requirements and scoring described throughout the QAP: (i) project location, (ii) housing needs characteristics, (iii) project characteristics, (iv) sponsor characteristics, (v) tenant populations with special housing needs, (vi) public housing waitlists, (vii) tenant populations of individuals with children, (viii) projects intended for eventual tenant homeownership, (ix) energy efficiency of projects and (x) the historic nature of projects.

## **2. State Criteria**

The State of Rhode Island Consolidated Plan is developed jointly by RIHousing and the state's Office of Housing and Community Development. Throughout the most recent Consolidated Plan development process, RIHousing and its partners consulted and met with many other public and private agencies to gather data and discuss the state's housing and community development needs and priorities to be included in the plan. The state completed the proposed 2020-2024 Consolidated Plan in the spring of 2020, which sets the proposed priorities and goals for housing and community development programs for the next five years.

Among the goals are the need to develop and maintain affordable housing, end homelessness, address healthy housing concerns, invest in non-housing community development, provide tenant-based rental assistance and to affirmatively further fair housing. Estimates of public and private sources to achieve housing preservation and production goals are nearly \$100 million annually, including LIHTC allocations. Each year, the state submits an action plan to the U.S. Department of Housing and Urban Development (“HUD”) restating its goals and makes adjustments to estimated spending and output.

Household incomes in Rhode Island, particularly those below the 40<sup>th</sup> percentile, have been stagnate for over a decade. Over that same period, rents and home sale prices have steadily increased from post-recession lows. Even modest growth in housing prices represents significant impacts on household budgets for low- and moderate-income Rhode Islanders. These trends are expected to continue through 2025, resulting in a sustained need for affordable housing options. Rental housing represents the major demand of this income group. Given the housing burden currently experienced by lower income households, special attention will need to be given to the development of low-cost housing to help ensure housing affordability and stability for many Rhode Island households over the next decade.

Statewide Planning has developed the Rhode Island Land Use 2025 Plan (the “2025 Plan”) which encourages the development of designated growth centers. The 2025 Plan is located at [http://www.planning.ri.gov/documents/121/lu\\_exec.pdf](http://www.planning.ri.gov/documents/121/lu_exec.pdf). These growth centers and development areas envision a mix of commercial and residential uses with access to services, transportation and adequate water and wastewater infrastructure. In addition, all municipalities in Rhode Island have developed affordable housing plans which identify development opportunities within these communities.

### **3. Housing Needs**

The State faces an overall shortage of quality, affordable, safe and healthy rental homes. Close to fifty percent (47.4%) of the State’s renter population is housing cost burdened. Twenty-five percent (25.2%) of renters are severely cost burdened and pay more than 50% of their income towards rent (2012-2016 CHAS). In 2018, Rhode Island ranked 6<sup>th</sup> highest nationally for homeowners that were housing cost burdened at 32% (Harvard JCHS State of the Nation’s Housing, CHAS). According to the National Low-Income Housing Coalition’s 2018 Out of Reach Report, based on the most recent census data, Rhode Island has the 19<sup>th</sup> highest gap between what renters earn and what it costs to rent a two-bedroom apartment.

There are currently 27,300 Rhode Island homeowners and 43,300 renters, totaling 70,600 Rhode Island residents, who are severely housing cost burdened in the state. In contrast, only 12,298 affordable homes are needed today for every community in the state to meet its 10% affordable housing goal.

Much of the state suffers from a continually aging housing stock, a significant portion of which is characterized by severe or moderate physical problems such as lead-based paint hazards.

The redevelopment of properties that are in foreclosure and those that are abandoned and vacant are a priority for RIHousing financing. Vacant and abandoned property erodes overall property values and causes deterioration in entire communities where prior investment has occurred. RIHousing is committed to using resources where they will most efficiently be used to stabilize neighborhoods.

To meet the state's goal of at least 10 percent (10%) affordable housing in each community, the state must substantially increase its production. By concentrating state, federal and private resources to combine affordable housing with broader community development investments, neighborhoods can be revitalized. This approach encourages investment in Rhode Island's urban areas and in new or existing growth or town centers and surrounding neighborhoods. This comprehensive approach to development results in well planned developments that are sustainable and efficient.

The above criteria and housing needs provide the basis for the Threshold and Scoring Criteria set forth within the State's Allocation Plan.

**D. Lock-In of Applicable Credit Percentages**

- 1) For developments subject to the state's per capita credit allocation, the Applicable Credit Percentage for 9% credit is fixed at 9%. The Applicable Credit Percentage for a 4% credit allocation (for acquisition only) will be established based on published rates in effect in one of the following: (i) the month the project is placed-in-service; (ii) the month in which a binding and irrevocable election to lock-in the Applicable Credit Percentage is made between the owner and RIHousing or; (iii) at the time of issuance by RIHousing of a Carryover Allocation Agreement ("CAA").
- 2) For developments utilizing tax exempt bond financing with 4% credit:

Borrowers can only lock-in the Applicable Credit Percentage on two occasions—the month in which the tax-exempt bonds were issued or the month in which the units are placed-in-service. Developers should seek professional advice to mitigate some of the financial and market risk associated with this election.

- 3) Under Section 42(h)(7)(D) in allocating a LIHTC dollar amount, RIHousing must specify the applicable percentage and the maximum qualified basis of the building. The applicable percentage may be less, but not greater than, the appropriate percentage for the month the building is placed in service, or the month elected by the taxpayer under Section 42(b)(2)(A)(i)(I).

For further information and detailed requirements relating to binding credit percentages, refer to Section 42 of the Code.

#### **E. Eligibility Requirements**

To receive an allocation of LIHTCs, whether from the State’s allocated pool or through the use of tax-exempt bond financing, a project must meet eligibility requirements under both the Allocation Plan and the Code. While many of these requirements are briefly summarized below, applicants should note that the federal rules governing LIHTCs are complex. All Developers are advised to consult a qualified tax attorney and/or accountant to determine eligibility for the credit. In making this determination, qualified professionals are expected to be current and knowledgeable with all private letter rulings (“PLRs”) and technical assistance memoranda (“TAMs”) issued by the Internal Revenue Service (“IRS”) which may provide insight to the IRS view regarding eligible basis determinations.

In allocating LIHTCs, RIHousing makes no representations to owners or other parties regarding compliance with the Code, Treasury Regulations or other laws or regulations governing LIHTCs. Neither RIHousing nor its employees, agents, representatives, Board Members, or employees shall be liable for any matters arising out of, or in relation to, the allocation of LIHTCs.

##### **1) Residential Rental Property**

In order for a project to qualify as a low-income housing project, it must be residential property. In general, the project must be: used other than on a transient basis; rented or available for rent on a continuous basis; available to members of the general public; and suitable for occupancy. Facilities providing continuous nursing, medical, or psychiatric care are not considered residential rental units for LIHTC purposes. Continual care, however, should not be confused with certain supportive services which can be provided, such as assuring that tenants obtain incidental care, as needed, by facilitating the making of medical appointments and

by providing transportation to medical facilities, and by the provision of basic first-aid skills in case of emergencies.

## **2) Extended Use Period**

The Code requires that the low-income occupancy and rent restrictions be maintained during the initial compliance period of 15 years (Section 42(I)(1)). In addition, the occupancy restrictions must be maintained for an extended use period of an additional 15 years per Section 42(h)(6)(D). RIHousing requires the following:

- a. A Declaration of Land Use Restrictive Covenants ("Declaration") committing to an extended use period of affordability for the qualifying units of at least thirty years and a prohibition during the entire extended use period – not just the three-year vacancy decontrol period – against evicting or terminating tenancy of existing tenants in low-income units other than for good cause, must be executed by the project owner.
- b. If a development is allocated LIHTC under the nonprofit set-aside, the current owner (and any new owner) during the compliance period must continue to qualify under that set-aside. The owner will indicate in the Declaration that they are electing to qualify under the nonprofit set-aside.
- c. For projects financed with tax-exempt bond proceeds, the required extended use period of affordability will be the greater of (i) the period that the tax-exempt bonds remain outstanding or (ii) forty years.
- d. The owner must waive the right to seek termination of the Declaration by petitioning RIHousing to find a buyer of the development as provided in Section 42(h)(6)(E)(i)(I)(II) of the Code.
- e. In addition to the Declaration, RIHousing requires that a Regulatory Agreement be recorded prior to any lien documents and not be subject to termination in the event of foreclosure. The development owner may be required to have all lien holders of a Development complete and sign a subordination to the Regulatory Agreement that will subordinate their liens to the provisions of the Regulatory Agreement.



### 3) Rent and Tenant Income Restriction

The project must meet certain tenant income and rent restrictions:

a. Income Restrictions:

The Project must elect one of the following three Minimum Set-Asides:

at least 20 percent of the rental units in the project must be rent restricted for and occupied by households with incomes no higher than 50 percent of the Area Median Gross Income (“AMGI”), adjusted for family size;

**OR**

at least 40 percent of the rental units must be rent restricted and occupied by households with incomes no higher than 60 percent of the AMGI, adjusted for family size.

**OR**

Under Income Averaging, at least 40 percent of the units must be both rent-restricted and occupied by individuals whose incomes do not exceed the imputed income limitation designated by the taxpayer.

The average of the imputed income limitations designated cannot, according to Code exceed 60 percent of AMI, however RIHousing is designating the maximum as 58 percent of AMI.

The designated imputed income limitations must be in 10 percent increments as follows:

- 20 percent
- 30 percent
- 40 percent
- 50 percent
- 60 percent
- 70 percent
- 80 percent

Beginning with the release of AMGI tables for 2009, HUD is providing a separate table for IRC §§ 42 and 142(d) housing projects, which HUD now collectively refers to as “Multifamily Tax Subsidy Projects” (“MTSP”). The tables identify the income limits at the 50% and 60% AMGI levels needed to satisfy the minimum set-aside requirement. As a result, the instructions in Rev. Rul. 89-24 to compute 60% AMGI are no longer applicable. Additionally, HUD publishes average

income minimum set asides for LIHTC properties in 10 percent increments from 20 to 80 percent of area median income. These income limits are also based on MTSP data.

b. Rent Restrictions:

The gross rent charged to a tenant, including utilities, cannot exceed 30% of the income limit for a qualified low-income household at 50% or 60% or, for Average Income Test elections, the applicable unit income/rent designation of AMGI adjusted for family size, assuming 1.5 persons per bedroom. A table of qualified rents is located in the Developers Handbook and from HUD at <http://www.huduser.org/portal/datasets/mtsp.html> and from Novogradac at <http://www.novoco.com/products/rentincome.php>.

For more information on tenant income and rent restrictions, including rules for calculating rents, see Section 42 of the Code.

**4) Least Amount of LIHTC Necessary for Project Feasibility**

The Code requires that RIHousing allocate credits in the minimum amount necessary for the financial feasibility of the project and its continued viability as a qualified low-income housing project throughout the credit period.

RIHousing must evaluate the amount of the credit at three specific times: (1) at the time of application, (2) at the time of reservation, and (3) at the time the building is placed-in-service and an IRS Form 8609 is issued. RIHousing will consider the proposal's distribution of the tax benefits between direct development costs, soft costs, fees, operating reserves and other costs and evaluate the need for LIHTCs to fill the gap after other financing sources and subsidies have been taken into account. Developers will be required to certify the source and value of other subsidies and funding for the proposal.

**5) Minimum Property Standards**

Projects must meet state or local health or building codes or regulations. Corrections necessary to repair code violations must be specified in a rehabilitation work plan. The Developer will be required to provide certification or to demonstrate to RIHousing that all code violations have been corrected upon construction completion. Compliance with health, safety and building codes is an ongoing obligation; non-compliance may result in penalties and/or recapture of credit.

**6) Placed-In-Service Requirements**

RIHousing will allocate credits only to projects which can be reasonably expected to become eligible for the credits in the year in which the Developer is to be awarded LIHTCs. This means that projects must either be able to be placed-in-service in that year or have incurred more than ten percent (10%) of their reasonably anticipated project basis within twelve months of the reservation of LIHTCs. Placed-in-service generally refers to the issuance of the first Certificate of Occupancy for each building in the project.

**7) Minimum Rehabilitation Requirements**

The Code requires that LIHTC projects involve minimum rehabilitation expenditures. Per the Code, for a building to be substantially rehabilitated, the expenditures during any 24-month period must be at least the greater of: (a) twenty percent (20%) of the depreciable basis of the building determined as of the first day of the 24-month period; or, (b) an average of \$6,700 (as of 2017) per low-income unit adjusted annually for inflation. RIHousing requires a minimum rehabilitation expenditure of \$15,000 per unit.

**8) Ten Year Placed In Service Restriction**

To be eligible for the acquisition credit, buildings may not have been placed in service within the last ten years. Generally, a transfer of the building results in a new placed-in-service date if, on the date of the transfer, the building is occupied or ready for occupancy. Exceptions may apply to certain property transfers and expiring use properties. In cases involving the purchase of a development that previously utilized LIHTCs for acquisition, the property may not be eligible for acquisition credit from the second purchase until the completion of the initial 15-year compliance period. According to Private Letter Ruling 200502019 released by the IRS, transfers of 99 percent partnership interest do not result in a new “placed in service” date. However, always consult with a tax specialist for questions of specific project eligibility.

Pursuant to the Housing and Economic Recovery Act of 2008, federally-assisted buildings as well as buildings assisted under similar State programs are eligible for acquisition credits. In addition, properties acquired from defaulted banks (as defined under the Federal Deposit Insurance Act) may also be eligible to qualify for

acquisition credits within the 10-year period effective for buildings placed in service after July 30, 2008.

**9) Community Service Facilities**

The portion of a residential building used as a community service facility may be eligible for the LIHTC Program. A community service facility is a facility designed to primarily serve individuals whose income is 60% or less of area median income. No more than 25% of the total basis of the building may come from the community service facility portion of the building.

**10) Market Study**

Prior to closing, RIHousing requires that a comprehensive market study conforming to requirements consistent with standard industry practice be conducted as a condition of credit allocation analyzing the market area, including the depth and breadth of demand, comparable properties and rates, comparable operating expenses, market absorption rates as well as a study of the needs of the prospective population. For projects involving rehabilitation of existing and occupied properties with project-based rental assistance contracts, RIHousing, in its sole discretion, may modify the market study standards to reflect actual data available to RIHousing about the operation of the project and its market area. The market study will be completed by a disinterested party commissioned by RIHousing and at the Developer's expense. The market study may also be commissioned by the development investor or third-party lender and accepted by RIHousing in its sole discretion. For mixed income proposals, a third-party market study will be required with the application for LIHTCs.

**11) Native American Housing Assistance**

Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) will not be taken into account in determining whether a building is federally subsidized for purposes of the LIHTC Program. Therefore, such buildings will qualify for 9% credit as deeper targeting consistent with the rules for HOME-financed projects (i.e. 40 percent of the units at 50 percent of area median income).

**12) Homeownership Option**

Developers electing to convert to homeownership at the end of the 15-year compliance period may do so under the Code. RIHousing will approve no more than one (1) conversion application per calendar year. As these developments will be rental housing for a minimum of fifteen years, they will be underwritten as a rental development and are subject to the same underwriting criteria set forth in the Developers' Handbook.

**13) Public Housing Waiting Lists**

Sponsors must commit in writing to the following: prior to occupancy, sponsor will provide written notice to the local Public Housing Authority with jurisdiction over the project location (or, where there is no local Public Housing Authority, RIHousing as the Section 8 Administrator for the State of RI) that the project will accept tenant-based vouchers.

**14) Tenant Populations of Individuals with Children**

Sponsors are encouraged to provide housing that provides opportunities to single parent and two-parent households with children.

**F. HUD Qualified Census Tracts/Difficult-To-Develop Areas**

Projects located in the HUD's designated qualified census tracts ("QCTs") or difficult-to-develop areas ("DDAs") may be eligible for additional LIHTCs. DDAs are designated annually by HUD as updated income and Fair Market Rent ("FMR") data become available.

QCTs are defined as any census tract (or equivalent geographic area) in which at least 50% of the households have incomes of less than 60% of the AMGI or census tracts which have a poverty rate at or above 25 percent. Generally, HUD publishes the list of QCTs and DDAs on an annual basis.

If an area is listed as a HUD designated QCT or DDA one year and is not listed on a subsequent list of designated areas, the designation is still effective if (1) the allocation of credit to an applicant is made no later than the end of the 730-day period after the submission to the credit-allocating agency of a complete application by the applicant, and the submission is made before the effective date of the subsequent lists; or (2) for purposes of Section 42(h)(4) of the Code, the bonds are issued or the building is placed in service no later than the end of the 730-day period after the applicant submits a complete application to the bond-

issuing agency, and the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

The additional credits available to projects falling within the definitions of either or both of these categories are derived by increasing the project's eligible basis for the new construction or substantial rehabilitation portion of the project by up to 30%. The actual increase in basis is determined at the discretion of the allocating agency pursuant to its analysis of the maximum amount of subsidy necessary to complete the project. The 30% increase is not available for the costs associated with the acquisition portion of any project.

Pursuant to H.R. 3221 Title I – Housing Tax Incentives, Rhode Island will prioritize projects that propose housing (i) for special needs populations, (ii) for very low-income persons and families, (iii) for general occupancy units in “areas of opportunity” as defined by HUD or are otherwise proposed to be sited in areas of the state that will promote efforts to affirmatively further fair housing, and (iv) that is consistent with the RIHousing's Comprehensive Community Development (“CCD”) principles including the ability to collaborate, secure and leverage non-traditional resources to maximize financial feasibility for eligibility under the basis boost which is applicable to DDAs.

#### **G. HUD Subsidy Layering Guidelines**

All projects submitted to RIHousing that may receive LIHTCs in combination with any form of HUD housing assistance will be subject to the subsidy layering review guidelines of Section 911 of the Housing and Community Development Act of 1992. These requirements are designed to ensure that participants in affordable multi-family housing developments do not receive excessive compensation by combining various HUD housing assistance with assistance from other federal, state, or local agencies. The guideline standards are divided into three categories: Builder's Profit, Developer's Fee, and Syndication Expenses. HUD has established safe harbor and ceiling standards for each of these categories. LIHTC agencies may perform the subsidy layering review function provided the agency certifies to HUD that it will properly apply the guidelines. RIHousing has assumed these responsibilities.

In accordance with Section 911 of the Housing and Community Development Act of 1992 and the Published Guidelines for Subsidy Layering, the following standards will be applied to all developments:

- 1) Builder's Profit - for developments subject to subsidy layering, up to 6 percent of construction costs will be allowed for builder's profit, 2 percent of construction costs for builder's overhead, and 6 percent of construction costs for general requirements. For those developers where there is an identity of interest between the owner

and the general contractor, the maximum amount of builder's profit allowed is 50% of the amounts referenced in the current Program Bulletin. Note also that for projects subject to section 911 Subsidy Layering reviews, alternative general contractor fee limits may apply. Any changes specific to RIHousing's fee limits will be outlined in the current Program Bulletin.

- 2) Developer Fees – Developer Fee guidelines are located in Section 9 of the Developer's Handbook and may be modified by Program Bulletin. The safe harbor for Developer's fees is 10 percent, including developer overhead, of the total development cost of the project not including developer fee and operating reserve. RIHousing may approve exceptions to the safe harbor standard and allow developer's fees of up to 15 percent of the total development cost of a project.
- 3) Syndication Expenses - The safe harbor limits for syndication expenses, excluding bridge loan costs, are (a) 10 percent of gross syndication proceeds for private offerings and (b) 15 percent of gross syndication proceeds for public offerings. RIHousing may approve exceptions to these percentages allowing up to 15 percent of gross syndication proceeds for private offerings and up to 24 percent of gross syndication proceeds for public offerings.

In addition, for each development, RIHousing will establish an applicable market rate for equity. This market rate will be used to determine the net syndication proceeds at the project's placed-in-service date. The rate will be based upon the development's market value, comparable syndications, and/or RIHousing's estimation of market trends.

#### **H. Single Room Occupancy Units**

Federal law requires that a low-income unit may not be used on a transient basis. In general, tax regulations require a minimum of a six-month lease. However, an exception may apply for single room occupancy units that are rented on a month-to-month basis or for longer periods.

#### **I. Housing for the Homeless**

The LIHTC has become a substantial resource for permanent supportive housing for the homeless. The portion of a building used to provide supportive services may be included in the qualified basis. Permanent supportive housing for the homeless must contain sleeping accommodations, and kitchen and bathroom facilities. Supportive services must be either (a) located within the building or (b)

be readily available to residents and well defined in a written supportive service plan outlining how residents will be connected to the services.

**J. Handicapped Accessibility**

LIHTC projects must comply with all applicable federal and state statutes and regulations regarding the operation of adaptable and accessible housing for the handicapped, including, but not limited to, Section 504 of the Rehabilitation Act of 1973, as amended (“Section 504”) and the ADA Amendments Act of 2008, which amended Section 504.

**K. Affirmative Action/Equal Employment Opportunity ("EEO")**

RIHousing is committed to affirmative action and EEO. We have established minimum workforce utilization goals for Minority Business Enterprises and/or Women Business Enterprises (“MBE/WBE”), and monitor construction projects for compliance with these goals. All developments receiving funding under the Rental Production Program must use best efforts to (a) award at least 10% of the total construction contract dollar amount to minority and female owned businesses, and (b) ensure that at least 10% of labor hours for all trades are performed by minorities and/or women. Developers are encouraged to exceed the minimum goals set by RIHousing. Note that only those businesses included in the Rhode Island Department of Administration’s Directory of Certified Minority and Women Business Enterprises will be recognized in measuring the minority and women business and workforce utilization goals. Further note that for purposes of measuring these goals, RIHousing does not include persons of Portuguese descent as a recognized minority.

All developers receiving an allocation of credits from RIHousing must enter into an Affirmative Action Agreement detailing specific affirmative action goals and definitive, aggressive strategies and action steps to ensure that such goals are achieved.

**L. Fair Housing Considerations**

**1. Siting and Marketing Consideration**

In January 2017, the U.S. Department of the Treasury (“Department of the Treasury”) issued regulations providing guidance on the implementation of Title VI of the 1964 Civil Rights Act, as amended (42 U.S.C. Section 2000d, et seq.)(hereinafter, “Title VI” and its regulations “the Title VI regulations”), as it applies to programs or activities receiving assistance from the Department of the Treasury. Specifically, the Title VI regulations prohibit discrimination on the basis of race, color, or national origin in programs or activities receiving federal financial assistance from the Department of the Treasury. See 31 CFR Part 22. Any



proposal submitted for LIHTCs must comply with Title VI and Title VI regulations.

Under federal law, individuals seeking housing may not be discriminated against based on their race, color, religion, sex, ancestral origin, familial status or disability. State fair housing laws further extend protections against housing discrimination on the basis of marital status, sexual orientation, age, gender identity or expression, veteran status, and status as a victim of domestic abuse, or by reason of association with members of any of these protected classes.

In addition to prohibiting discrimination in housing due to membership in a protected class, the federal fair housing act also imposes an obligation on recipients of federal housing assistance to administer programs in a way that affirmatively furthers fair housing. In its administration of the LIHTC Program, RIHousing is committed to encouraging the location of affordable homes throughout the state, particularly in geographic areas that have not reached the state affordable housing goal. RIHousing's scoring system provides incentives to achieve that result.

Section 42(m)(1)(A)(ii) of the Code requires that each local jurisdiction have a "reasonable opportunity" to comment on any proposal to allocate LIHTCs to a project within that jurisdiction. In accordance with Revenue Ruling 2016-29, the Code ensures the opportunity for local input regarding the allocation decision but does not grant a local veto or authorize an allocating agency to abandon the responsibility to exercise its own judgment. RIHousing will notify the Chief Executive Officer, or the equivalent, of each jurisdiction in which an applicant has been selected to receive federal low-income LIHTCs to provide the jurisdiction with an opportunity to comment.

In addition, in order to ensure that all potentially eligible residents of RIHousing-financed developments have a fair opportunity to gain admission to those developments, RIHousing requires that sponsors employ an open and fair process that affirmatively furthers fair housing opportunities. To that end, all homes financed by RIHousing must be available to the general public, must be marketed pursuant to an approved affirmative fair marketing plan and must be advertised on <http://www.housingsearchri.org>.

At a minimum, the affirmative fair housing marketing plan must include an analysis of those populations least likely to apply for housing in the area in which the development is located and a targeted marketing program to reach those populations. Such a program could include marketing in print or broadcast media targeted to such populations, outreach to organizations that serve those populations, and the like. In addition to the affirmative fair housing marketing plan, the housing must be distributed in accordance with an approved resident selection plan that is fair, open and transparent. The resident selection plan must specify the process and timetable under which applications will be accepted, local

preferences for admission, if any, the policy for initial selection of residents if the number of qualified applicants exceeds the housing available, and the waiting list policy.

The Violence Against Women Reauthorization Act of 2013 and its implementing regulations afford certain protections to victims of domestic violence, dating violence, sexual assault, and stalking, who apply for or reside in federally assisted housing, including housing financed with LIHTCs. RIHousing requires that sponsors incorporate these protections into lease forms, tenant selection plans, and resident policies relating to unit transfers and changes to family composition. On an annual basis, owners will be required to certify compliance with all applicable requirements of the Violence Against Women Reauthorization Act of 2013.

## 2. Limited English Proficiency (“LEP”)

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. In certain situations, failure to ensure that persons who are LEP can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination. Executive Order 13166, signed on August 11, 2000, directs all federal agencies, including HUD, to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons. All programs and operations of entities that receive financial assistance from the federal government, including but not limited to state agencies, local agencies and for-profit and non-profit entities, must comply with the Title VI requirements.

A LEP person is one who, as a result of national origin, does not speak English as their primary language and who has limited ability to speak, read, write, or understand English.

Federally assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient's programs and activities. To do this, the recipient should:

(1) Conduct the four-factor analysis, (2) Develop a Language Access Plan (LAP) and (3) Provide appropriate language assistance.

The actions that the recipient may be expected to take to meet its LEP obligations depend upon the results of the four-factor analysis including the services the recipient offers, the community the recipient serves, the resources the recipient possesses, and the costs of various language service options. All organizations would ensure nondiscrimination by taking reasonable steps to ensure meaningful access for persons who are LEP. HUD recognizes that some projects' budgets and resources are constrained by contracts and agreements with HUD. These constraints may impose a material burden upon the projects. Where a HUD

recipient can demonstrate such a material burden, HUD views this as a critical item in the consideration of costs in the four-factor analysis. However, refusing to serve LEP persons or not adequately serving or delaying services to LEP persons would violate Title VI. The agency may, for example, have a contract with another organization to supply an interpreter when needed; use a telephone service line interpreter; or, if it would not impose an undue burden, or delay or deny meaningful access to the client, the agency may seek the assistance of another agency in the same community with bilingual staff to help provide oral interpretation service.

Plans for assisting LEP persons should be included in the Tenant Selection Plan. For more information on LEP visit: <http://www.lep.gov>. All developments receiving LIHTC will have to complete HUD form 935.2A to detail its affirmative fair housing marketing plan.

**M. One for One Replacement**

Any proposal that contemplates the loss of existing deed restricted affordable homes must be accompanied with a plan outlining one-for-one replacement of the lost affordable rental homes. Proposed replacement units must be of comparable type and affordability.

**N. Industry Recommended Standards**

In evaluating and underwriting housing development proposals, RIHousing is guided by or generally follows industry recommended standards developed by the National Council of State Housing Agencies (NCSHA). Provisions of the “NCSHA Recommended Practices in Housing Credit Administration”, updated in December 2017, have been incorporated into the QAP and/or the RIHousing Developer’s Handbook.

**O. Uniform Relocation Act**

Developments financed under the Rental Production Program are required to provide for uniform and equitable treatment of persons displaced from their homes and businesses and to establish and provide for uniform and equitable relocation of any residents or businesses.

**II. APPLICATION PROCESS AND RANKING METHOD FOR 9% CREDITS**

**A. Funding Rounds**

RIHousing may hold up to three competitive funding rounds each year for the 9% allocated credits. Funding rounds will be announced by RIHousing via Program

Bulletin and/or issuance of a Request for Proposals ("RFPs"), and by advertisement in local print media. RIHousing may adjust the number or timing of funding rounds if required by the passage of federal legislation or adoption of IRS rules and regulations, to accommodate variations in demand for the supply of the credit, or for other compelling circumstances. Depending on the strength and number of proposals received in any funding round, RIHousing may in its sole discretion create an official waiting list, for the LIHTC Program Year for proposals that demonstrate considerable merit but for which allocable credit is not immediately available. RIHousing will make the waiting list available for public inspection.

During the review period, staff will determine the need for the credit and the financial feasibility of the proposals; however, this determination is not a guarantee by RIHousing of the feasibility or viability of any proposal. RIHousing reserves the right to rescind reservations of LIHTCs for projects in the event that RIHousing determines that the project is not feasible as proposed or that a change in circumstances has materially altered the proposal as submitted and approved. Any such rescissions shall be in writing and provided to the applicant.

The anticipated schedule for LIHTC reservations is as follows:

**First Funding Round**

RFP issuance	On or about September 30, 2020
Proposals submission deadline	On or about the third Friday in December 2020
Reservation decisions rendered by RIHousing's Board of Commissioners	At the April 2021 Board Meeting

Additional funding rounds will be conducted if necessary to allocate remaining credits or returned credits. RIHousing reserves the right to limit competition in subsequent competitive funding rounds to proposals that were submitted in the first and/or second competitive funding rounds.

RIHousing retains the right to award LIHTCs outside of competitive funding rounds to projects which were previously awarded LIHTCs and which either have (a) returned their previously awarded LIHTCs to RIHousing for use by other developments pursuant to an agreement with RIHousing or (b) qualify for and can demonstrate a need for additional LIHTCs to meet project feasibility requirements. The projects must meet one or more of the following criteria:

- The Project incurred or faces substantial, unforeseen cost increases beyond its control;

- The Project is subject to a substantial unanticipated reduction in equity yield on the sale of the LIHTCs, or a substantial unanticipated reduction in leveraged debt;
- Supplemental LIHTCs would improve the project's financial feasibility and maintain its consistency with RIHousing's Underwriting Standards and Development Policies for Multi-Family Finance.

RIHousing reserves the right to award any additional credits received during any year to qualified projects that were previously placed on a waiting list in prior rounds. RIHousing may consider making a reservation of LIHTCs for qualified application(s) received outside the context of the first or subsequent funding rounds if LIHTCs are available from the previous year. In such event, a general priority will be given to projects which best demonstrate readiness to proceed, and/or projects which have previously received credit awards from RIHousing.

## **B. Project Selection Process**

**Applicants are advised to thoroughly review the QAP, the Developer's Handbook and the application requirements when preparing their application. While RIHousing staff is available to discuss potential applications prior to submission, it is solely the applicant's responsibility to select a preferred plan of action with one identified sources and uses.**

RIHousing's selection process for allocating LIHTCs is designed to select proposals which address the priorities identified in the Rhode Island Consolidated Plan: 2020-2024, the federal criteria included in the Tax Code and the housing needs of the State. A Funding Committee including but not limited to: senior staff; and one or more representatives of the Board of Commissioners will evaluate and score applications based on the review criteria stated below.

All Tax Credit reservations are made based upon the information contained in the Application. Upon review of the application, RIHousing staff may advise the applicant of discrepancies or incomplete items and will allow the applicant to clarify or supplement the original application. Such requests will be made in writing to the applicant who will have 10 business days to respond in writing only. **Only clarifications or missing information will be accepted, no substantive changes may be made by the applicant after the application is submitted. A substantive change may include but is not limited to modifying the LIHTC request, changing unit count, adding or removing specific locations from the application.** Applicants will be provided an opportunity to make a formal presentation of their proposal to RIHousing staff. RIHousing staff will provide some written questions to the developer prior to the presentation date. Within 2 business days of presentation, RIHousing may, in its sole discretion, issue questions or a request for clarification related to the application. Applicant will have 48 hours to provide a written response. After that date, there will be no further dialogue

with the applicant until all Threshold determinations and scoring has been completed as outlined below.

RIHousing staff will conduct a review to determine whether a proposal meets the Threshold Criteria. If staff determines that a proposal does not meet the Threshold Criteria, notice will be provided to the applicant prior to the Funding Committee meeting at which staff present their recommendations. Threshold determinations are not appealable.

Only those projects that meet the Threshold Criteria will be officially scored. Applications passing Threshold will be reviewed and scored against the LIHTC priorities set forth in the QAP. After applications have been scored by RIHousing staff, but prior to presentation to the Funding Committee, applicants shall be notified of their overall score. Applicants shall have the opportunity to meet with staff to discuss their project scoring and may also appeal the score prior to presentation to the Funding Committee.

Aggregate assessment and score in no way guarantees an award of LIHTCs to a particular development. During proposal review and throughout the LIHTC allocation process, RIHousing will utilize its sound and reasonable judgment and will exercise its discretion consistent with sensible and fair business practices. RIHousing reserves the right not to reserve LIHTCs to any applicant or project, regardless of the proposal's aggregate assessment and score, if it determines, in its sole and absolute discretion, that 1) a reservation for any applicant or project does not further the purposes and goals set forth in this Allocation Plan; 2) available resources are not sufficient to fulfill a LIHTC request; 3) there exists an over-concentration of projects in a specific geographic location; or 4) there exists an over-concentration of specific production types (e.g. new production, assisted living, preservation or rehabilitation).

In addition, RIHousing reserves the right to adjust aggregate assessments and scores or to rescind a reservation of LIHTCs if there is a material change in the project including, but not limited to, a change in the general partner, the construction start date which adversely affects the achievement of stated goals and/or diminishes the proposal's ability to address documented housing needs or significant changes to the budget.

RIHousing may not allocate all available credits. Credits not allocated under the first round may be allocated at a future date within the credit year to projects submitted under the initial RFP. RIHousing will request updated models, will review and re-score all proposals submitted, even those proposals that did not originally meet the Threshold Criteria set forth herein.

RIHousing may elect to award a forward allocation of credits to a project provided it is determined that the project meets the objectives of the State's QAP and that

such forward allocation is in the best interests of the project and RIHousing's mission and affordable housing objectives.

If RIHousing allocates LIHTCs from the LIHTC Program outside of the priorities and selection criteria set forth in this Allocation Plan, we will document and provide a written explanation of our decision to the general public.

### **C. HUD Foreclosure and Community Impact Set Aside**

RIHousing has established a set aside of 2021 LIHTC for a development that has been foreclosed on by HUD with significant community impact through the preservation and/or creation of affordable housing, and that meets all of the following criteria:

- Has been foreclosed on by HUD;
- Consists of 74 or more units of family housing;
- Project achieved a Real Estate Assessment Center (REAC) score below 60 from HUD;
- Has been vacant for two or more years;
- Project's project-based rental assistance has expired/lapsed and/or in jeopardy of being lost permanently;
- The general partner/managing member of the proposed rehabilitation project shall not be a related party to the ownership entity in place at the time of foreclosure;
- Is concentrated within a small urban geographic area thereby increasing its impact on the surrounding community; and
- Has significant community impact as evidenced through a community engagement process.

A minimum point threshold has been established for this set aside as set forth in this Allocation Plan. In order to be awarded a reservation of LIHTC under this set aside, a proposal must receive a score that is no less than the average score of all proposals that pass the Threshold Criteria.

### **III. LIHTC REVIEW CRITERIA**

In its mission to meet the statewide need for affordable homes, RIHousing believes it to be in the public's interest to avoid concentration of affordable housing in any one neighborhood, community or corner of the state. As a small state, Rhode Island receives a relatively small statewide allocation of LIHTC. Therefore, within the goals of achieving financially feasible developments, RIHousing will generally seek to fund a greater number of mid-sized developments in urban, suburban and rural communities (i.e. less than 50 subsidized apartments) rather than fewer larger scale developments.

The LIHTC is the primary funding source for the development of new affordable rental homes in Rhode Island. Therefore, developers applying under the Rental Production Program must meet the following requirements:

- (i) For new production proposals, create a minimum of 30 new units.
- (ii) For proposals contemplating preservation, 30% of the overall units in an application or 20 units, **whichever is greater**, must be newly created affordable homes.
- (iii) As the LIHTC is a highly competitive and scarce resource, no single development may be awarded more than 40% of Rhode Island's annual small-state minimum allocation. **Any application that requests more than 40% of the annual allocation will be disqualified.**

In awarding development resources, including LIHTCs, RIHousing has identified the following priorities:

1. Increase the supply of affordable housing. While the existing stock of affordable housing faces threats from expiring subsidies and use restrictions, deferred maintenance and obsolescence, the extreme need for additional affordable housing makes new production RIHousing's primary housing priority.
2. RIHousing will approve no more than one preservation transaction per funding round for 9% allocated LIHTCs.
3. Dual and equal goals of (a) increasing the supply of affordable housing in communities that have traditionally had a lack of such housing; and (b) reinvesting in urban neighborhoods where housing may be substandard and blight is common and the housing is part of an overall neighborhood revitalization strategy.
4. Recognizing that good homes are essential for healthy families, the ability of older adults to remain safely in the community, and vibrant communities, the affordable homes must be well designed and attractive. RIHousing identifies these goals with its Comprehensive Community Development initiative and prioritizes developments that most effectively achieve these.
5. Because of the limited number of available subsidies, including the capital subsidy from the LIHTC, priority will be given to developments which can viably and effectively serve:
  - a. Very low-income households
  - b. Individuals and families who have experienced chronic homelessness
  - c. Individuals with special needs
  - d. Households with children.
6. Developments that best serve the needs of Rhode Island workers and businesses.
7. Developments that achieve these goals at the lowest cost.



In order to best achieve these goals, RIHousing has established five threshold criteria that must be met before a development can be considered for a reservation of LIHTC (the “Threshold Criteria”). The five Threshold Criteria are set forth here and described in more detail below. They are:

1. The developer and their development team must have experience in the successful development and operation of affordable housing of similar scope and complexity;
2. The development must demonstrate financial feasibility for at least 15 years and have a reasonable likelihood of feasibility for the entire term of financing;
3. The development must have a reasonable likelihood of achieving sustainable occupancy of 95% within 6 months of construction completion; and
4. Construction must be reasonably likely to commence within 12 months of preliminary commitment and be complete within 30 months of firm commitment.
5. The per unit total development cost (“TDC”) of the project does not exceed an absolute cap of \$375,000 per unit.

Only proposals that satisfy the Threshold Criteria review will be further considered under the Scoring Criteria.

#### **A. Threshold Criteria**

- 1) Development Team Capacity: The developer must have experience in the successful development and operation of affordable housing of similar scope and complexity within the past 5 years.
  - The developer and their development team will be evaluated on its professional capacity to plan, build, market, and operate the proposed development.
  - The performance record of the developer, consultant, architect, management agent and contractor will be measured individually and collectively by the quality and quantity of previous development, design, construction and property management efforts, as well as affirmative action records.
  - Each team member is expected to demonstrate satisfactory prior experience on projects of similar scale and complexity; to have

satisfactory professional references; and to devote sufficient experienced staffing and resources to complete the proposed development.

- If the developer does not have satisfactory prior experience, including but not limited to the ownership and management of LIHTC projects, they must enter into a joint venture with an entity experienced with the development of LIHTC projects.
- The mortgagor and contractor will also be evaluated for creditworthiness and financial capacity including a thorough review of the borrower's audited financial statements for the previous 3 years. Creditworthiness takes into consideration the financial condition of an organization, management capabilities, character and capacity.

RIHousing reserves the right to deny LIHTCs to any proposal where (i) any materially participating entity (owner or management agent) is not in good standing regarding compliance monitoring of other LIHTC projects; (ii) any partner, developer or other key development team member has been determined by RIHousing to be not creditworthy; or (iii) any partner, developer or other key development team member is on the HUD or RIHousing debarment list.

RIHousing will review each developer's most recent audit to ensure financial capacity to develop the project and manage the development for the long term. In addition, developers will be evaluated based upon the prior performance of existing developments both in RIHousing's portfolio and those financed by others. This review will include: 1) condition and security of existing developments; 2) maintenance and operating of existing developments; 3) leasing and occupancy history; 4) general management practices; and 5) financial management. A credit report will be required for all principals of for-profit developers participating in the LIHTC program.

For service-enriched housing proposals, development team members will also be evaluated on the basis of demonstrated success in (i) the development, design and construction of housing with supportive services; and (ii) the planning and delivery of services including adequacy of staffing and/or oversight of third party contracts for services.

- 2) Financial Feasibility: The development must demonstrate financial feasibility for (i) the overall development costs of the project and (ii) the long-term operation of the proposal.

- As to development costs, applicant must demonstrate that the proposed budget is adequate and realistic for the proposed project.
  - In regard to operations, the proposal must demonstrate financial feasibility for at least 15 years consistent with RIHousing’s underwriting guidelines and have a reasonable likelihood of feasibility for the entire term of financing.
  - RIHousing reserves the right to deny LIHTCs to proposals for which adequate funding sources have not been identified for all development costs or development costs do not appear to be consistent with the scope of the proposal. This includes a commitment of syndication. While commitments from these sources do not have to be secured before applying for LIHTCs, the applicant must be able to demonstrate to RIHousing’s satisfaction that the sources identified will be available to the Developer within 9 months of the reservation of credit.
  - For mixed income developments, an agreement with the municipality on the real estate tax assessment associated with the market rate units should include, at a minimum, an analysis of how the units will be assessed, the methodology for valuing the market rate units, the cap rate if applicable and the time frame associated with the tax assessment agreement.
  - Documentation must be provided demonstrating that the municipality has agreed to limit tax on the affordable units to 8% of the gross scheduled rental income for the real estate tax calculation or lesser percentage determined by the municipality.
- 3) Marketability: The development must have a reasonable likelihood that it will achieve sustainable occupancy of 95% within 6 months of construction completion. For mixed income proposals that meet the 20% at 50% or 40% at 60% set asides, the applicant must submit a third-party market study that includes an absorption schedule, lease-up reserve and identifies the timeline for achieving 95% occupancy. Marketability of all projects will be evaluated relative to the proposed locality of the development, target market population, rent levels and affordability, project design and amenities. Developers will be required to demonstrate marketability through such documentation as:
- Information on market comparables;
  - Information on the supply and quality of the existing housing stock and rent burdens; information on other planned development/revitalization activity in the area;

- Assessment of potential impact on the financial and operating viability of existing subsidized housing developments; local demographics (including income, age and any special needs characteristics); marketing and outreach strategies;
- Information demonstrating that the proposed location is appropriate for the target population in terms of environment, quality, proximity to services, and attractiveness of the site and its surroundings.
- Mixed use developments must provide the marketability information for both the residential and commercial components.

Developers are encouraged to set rents so that the proposed rents are affordable to residents in a given location and not simply set at the program's maximum rents. One aspect of a development's marketability is to have rents that are affordable and attractive to prospective tenants. Therefore, additional consideration will be given to projects that demonstrate that the proposed LIHTC rents are below those of comparable, unassisted units in the market.

- 4) Readiness to Proceed: Applicants must demonstrate that construction is reasonably likely to commence within 12 months of reservation of credits and be complete within 30 months of reservation. To receive and maintain a reservation of LIHTCs, all developers must demonstrate readiness to proceed throughout the pre-development process. An assessment of a proposal's initial readiness to proceed will be made based on the developer's ability to achieve the following within 9 months of an executed Reservation Letter for LIHTCs: receive all written land use and zoning approvals, and building permits; complete all regulatory, environmental, and historical reviews; maintenance of site control; secure all funding commitments; and demonstrated financial feasibility.

Continued readiness to proceed will be determined by RIHousing, in its reasonable judgment, based on factors such as a developer's ability to: meet the requirements to receive a Carryover Allocation Agreement; finalize and complete design development and contract drawings; secure an executed commitment letter with a LIHTC investor; demonstrate continued financial feasibility including but not limited to a signed Schedule of Values from a General Contractor based on an approved set of plans and specifications; and close on all financing and commence construction within 12 months of Reservation for LIHTCs.

RIHousing will use its best professional judgment in evaluating an application for readiness to proceed. Staff will consider the developer's past performance in meeting permitting, funding and closing deadlines in projects of similar scope and size, and present their recommendations to the Funding Committee for a final award decision.

- 5) Total Development Cost Cap: The per unit TDC of any project, regardless of which building type it is proposing, cannot exceed \$375,000 per unit. Any proposal exceeding the TDC cap, will be ineligible for an award of LIHTCs.

## **B. Scoring**

### **Point Allocation Summary**

- 20 points Total Development Cost
- 20 points LIHTC Efficiency
- 10 points State Housing Grant Funds
- 5 points Leverages rental and operating subsidy such as: HUD's Rental Assistance Demonstration program, Section 811 program, Federal or State Rental Assistance program.
- 10 Points Leverages Non-RI Housing or non-State Competitive Housing Resources such as Choice Neighborhoods Initiative, USDA or Federal and State Historic credits
- 6 points Serves very low-income, homeless and/or special needs persons
- 3 points Rhode Island Construction Firms
- 8 points Fully permitted development
- 24 points Alignment with Comprehensive Community Development goals
- 10 points Located in a community with less than 10% affordable homes
- 5 points Addresses vacant, foreclosed and blighted properties
- 5 points Energy Star
- 3 points Renewable Energy
- 3 points Utility Benchmarking
- 5 points Preservation of Greenfields

### **Total 137 points**

(20) Negative points if applicable

**FINANCING POINTS (Up to 65 points)**

- A. Up to 20 points - Total Development Cost (“TDC”) per residential unit based on construction type as defined below. If submitting a proposal with two types of housing, provide a breakout of TDC by type.

Projects with extraordinary conditions that increase costs beyond the TDC caps should provide detailed back-up outlining the reasons for the higher costs. Acceptable extraordinary conditions are generally limited to the following:

1. Excessive environmental remediation defined in a remedial action work plan required by the either the Environmental Protection Agency, the RI Department of Environmental Management, or the Coastal Resources Management Council.
2. The demolition of non-contributing structures to facilitate the leveraging of historic LIHTCs.
3. Prevailing Wages
4. The installation of on-site water treatment systems in rural locations.

If the applicant is seeking relief under one of these Extraordinary Conditions, the applicant should provide itemized breakdowns of these costs prepared and attested to by a general contractor. These costs will be evaluated by RIHousing to ensure consistency with the industry and will then be deducted from the unweighted TDC before applying the weighted average as described below.

Projects will fall within five categories of building type and RIHousing has determined a maximum total development cost (the “Overall TDC”) within each building type. **The Maximum per unit Overall TDC can be found in the Program Bulletin included in the 2021 Developer’s Handbook.** The building types and Overall TDC are as follows:

Building Type	Maximum per unit Overall TDC
Urban (includes scattered site and urban in-fill)	Refer to Section 9 of the 2021 Developer’s Handbook
Historic Mill Conversion	
Suburban/Rural Cluster Subdivision (buildings contain less than 8 units per building)	

Garden style apartment up to 4 stories	
4 or 5 Story Stick built on Podium Parking	

While the Overall TDC costs above are limits based on comparisons of previous RIHousing funded projects and RS Means, the scoring will be calculated on a weighted average (the “Weighted Average TDC”), based on bedroom size to ensure parity between projects that cater to different populations. Project applications will be evaluated for cost reasonableness using an index, which is the weighted average of the TDC per unit and the TDC per bedroom. For mixed-use projects, the Weighted Average TDC for only the residential portion of the project, including common areas, will be used for this calculation. The Weighted Average TDC will be calculated as follows:

$$([2 * \text{TDC/unit}] + [\text{TDC}/\# \text{ of bedrooms}]) \text{ divided by } 3.$$

The Weighted Average TDC will be the basis for scoring the TDC per unit. TDC Points will be based on \$5,000 increments. The calculations will be built into the proforma.

Proposals that include both New Construction and Preservation will require a Weighted Average TDC for both New Construction and Preservation. The two amounts will then be averaged for a final Weighted Average TDC.

Note: Efficiency apartments will count as one-half bedroom in the Weighted Average calculation.

**In order to ensure that applicants are submitting realistic pricing for their proposals, if allocated LIHTC, the first 10% of cost overruns above the preliminary budget, will be absorbed by a like reduction in paid developer fee before any additional LIHTC or soft funds will be allocated to the project.**

B. Up to 20 points - LIHTCs per residential unit. Applications with more than \$30,000 per credit per unit will receive 0 points. The points will increase by 1 for every \$1,000 below the maximum.

$$\text{Weighted Avg units: } ([2 * \# \text{ of bedrooms}] + [1 * \# \text{ of units}]) \text{ divided by } 3$$

The product, the Weighted Average Credit per Unit, will be the basis for scoring the LIHTC per unit. LIHTC per unit points will be based on \$1,000 increments. The calculations will be built into the proforma.

Note: Efficiency apartments will count as one-half bedroom in the Weighted Average calculation.

- C. Up to 10 points – RI Housing or State Housing Grant Funds (e.g., BHRI, CDBG, or State HOME) per residential unit. More than \$25,000 per unit will receive 0 points. The points will increase by 1 for every \$1,000 below \$25,000.

≤ \$15,000	10 points
Greater than \$25,000	0 points

- D. Up to 5 points for leveraging committed state and federal funds from rental and operating subsidy programs such as HUD’s Rental Assistance Demonstration Program, HUD Section 811 Program, Project Based Section 8 rental or other similar federal and state program.

20% or more units in the development	5 points
10-19% of units in the development	3 points
up to 9% of units in the development	0 points

- E. Up to 10 points – Leveraging of (i) hard debt, or (ii) non-RI Housing or non-State competitive housing resources (e.g. USDA funding, Federal and/or State Historic Credits, Rebuild Tax Credits, FHLB, private grants, etc.). Less than \$15,000 per unit will receive 0 points. The points will increase for every \$1,000 above the minimum.

≥ \$25,000	10 points
≤ \$15,000	0 points

**GENERAL POINTS (up to 19 points)**

- A.** Up to 6 points for effectively serving people (i) who have income at or below 30% of median income, (ii) are homeless or (iii) have special needs.

For developments in which the owner **will** be partnering with a Service Provider to provide supportive services:

- 6 points – 21% or greater of the total number of units in the development
- 4 points – 11- 20% of the total number of units in the development
- 2 points – up to 10% of the total number of units in the development

A service plan and memorandum of understanding with a service provider is required for homes that are intended for persons with special needs.



For developments in which no supportive services will be provided:

- 3 points – 21% or greater of the total number of units in the development
- 2 points – 11- 20% of the total number of units in the development
- 1 point – up to 10% of the total number of units in the development

B. Up to 3 points for utilizing Rhode Island based firms.

- 3 points for owner/applicant that certifies in the application to require that up to 50% of the sub-contractor contracts be awarded to Rhode Island based construction firms.

C. Up to 8 points for a development that at the time of application is permitted by all applicable regulatory agencies including: municipal permitting bodies (local planning, zoning and building permit approvals) and state regulatory agencies (Department of Environmental Management and Coastal Resources Management Council).

- 8 points for a fully permitted development that has building permits secured AND specifications are at least 75% complete AND architect confirms in writing that the plans and specifications can be 100% complete within 30 days AND the application includes a signed schedule of values from the general contractor, determined by RIHousing to be consistent with current pricing, that is the basis for the funding application.
- Up to 6 points for master, preliminary and final plan approval for development or for a development with “by right” approval. Points will be prorated based on approvals in place at time of application.

**COMPREHENSIVE COMMUNITY DEVELOPMENT (Up to 24 points)**

A community is more than homes; it includes different elements critical for high quality of life. Many elements are integral to creating vibrant communities, including:

	Points
Proposal is in a Qualified Census Tract and there is a Concerted Community Revitalization Plan that meets the criteria outlined in the Federal Criteria section of the QAP	1
Developer has participated in a public engagement process that includes community meetings and	1

community input beyond those held for the locally mandated approval process (must be documented).		
Development is within ½ mile of recreation, culture and/or entertainment opportunities		1
Developer is a community-based nonprofit that has a demonstrable track record of community engagement, is incorporated in the state of RI, has IRS 501(c)3 status and has operated housing in the neighborhood or similar neighborhoods in the state.		3
Development will have a range of income levels and at least 20% of the units are considered unrestricted units.		Up to 4
20% of the units are market rate	2	
Up to 40% of the units are market rate	3	
More than 40% of the units are market rate	4	
Development is designed using Crime Prevention Through Environmental Design (CPTED). Please see <a href="http://www.planning.org/pas/quicknotes/open/pdf/Qn42.pdf">www.planning.org/pas/quicknotes/open/pdf/Qn42.pdf</a> for the key principles of CPTED. Please note which principles have been incorporated		1
Development is within ½ mile of RIPTA or MBTA public transit service. Alternatively, development has access to no or low-cost transportation services available to all residents which can be documented with a letter or agreement with the provider		1
Development is or will be served by public water and utilities. On Site Water Treatment is acceptable		1
Development is situated in an existing or proposed Growth Center, or, Development is within 1 mile of existing public infrastructure such as hospitals, schools, libraries, community centers, etc. within the <b>Urban Services Boundary</b> (USB) as defined by GrowSmartRI and 2.5 miles for <b>non-USB</b> areas. For the definition of USB please see <a href="http://www.growsmartri.org/wp-">http://www.growsmartri.org/wp-</a>		3

<a href="http://content/uploads/2012/01/smart-growth-terms-and-concepts.pdf">content/uploads/2012/01/smart-growth-terms-and-concepts.pdf</a>		
Development has documented resident programs and/or partnerships with entities such as the YMCA, Boys and Girls Club or After School Programs.		1
Development incorporates at least three types of green infrastructure such as storm water runoff management, rain gardens, bioswales, green roofs or green streets		1
Development incorporates space for the co-location of supportive services to residents on site OR in another facility owned by the sponsor, or an affiliate, within 1/2 mile of the proposed project (MOU between applicant and provider must be included in application)		1
Development has a mixed-use component that includes rental space for a commercial business(s) (which can be in a separate ownership structure such as a condominium). “Community/Commercial” as defined in the Code is NOT eligible under this category		Up to 4
10% of the square footage is commercial	2	
Up to 20% of the square footage is commercial	3	
More than 20% of the square footage is commercial	4	
Development is within 1/2 mile of a business that sells fresh produce and food items year-round within the <b>Urban Core and Urban Ring</b> as defined by GrowSmartRI and 2.5 miles for <b>non-Urban Ring</b> areas. For the definitions please see <a href="http://www.growsmartri.org/wp-content/uploads/2012/01/smart-growth-terms-and-concepts.pdf">http://www.growsmartri.org/wp-content/uploads/2012/01/smart-growth-terms-and-concepts.pdf</a>		1

**COMMUNITY (up to 15 points)**

- A. 10 points – A development which is located within a community with less than 10% affordable housing as defined by state law; **OR**

- B. 5 points - A development in an exempt community with less than 10% affordable housing as defined by state law. Refer to the Developer's Handbook for the current list of eligible communities.
- C. Up to 5 points – A development that includes rehabilitation of vacant, foreclosed and/or blighted properties or infill development on vacant neighborhood lots. An infill lot is defined as a lot in an established and developed neighborhood that previously had a structure, and replacement of that structure serves to integrate the streetscape and fabric of the neighborhood. A unit must be non-habitable or have failed a HQS inspection to be considered blighted.
- 5 points: 100% of the total number of units in the development
  - 4 points: 80-99% of the total number of units in the development
  - 3 points: 60-79% of the total number of units in the development
  - 2 points: 40-59% of the total number of units in the development
  - 1 point : 25 -39% of the total number of units in the development

### **EFFICIENCY (Up to 16 points)**

Rhode Island Residential New Construction (“RNC”) Tier I standards under National Grid’s program guidelines are the baseline requirement of RIHousing’s current design and construction guidelines. These standards are slightly more stringent than the current R.I. State Energy Code Standards. Additional points may be awarded for exceeding the Tier 1 standards as set forth below:

- A. Up to 3 points may be awarded to new construction developments that achieve NGRID’s RNC Tier II and Energy Star 3.1 revision 8 standards to obtain a higher level of documented energy efficiency. The additional standards should be specifically itemized for review otherwise no points will be awarded.
- B. Projects undertaking substantial rehabilitation rather than new construction will be awarded up to 3 points if they demonstrate an ability to achieve NGRID’s RNC Tier II standards. The additional standards should be specifically itemized for review otherwise no points will be awarded.
- C. Up to 2 additional points may be awarded to projects that achieve RNC Tier II **AND** meet the State’s most current Net Zero or Passive House standards.

D. Up to 3 points may be awarded to those developments that incorporate Photo Voltaic solar panels (PV) or other renewables including net metering (as defined in R.I.G.L. Chapter 39-26-5). Developments will receive points as follows:

- 1 point if the proposed PV array system or other renewable energy systems is large enough to cover no less than 50% of the project's annual common area and site electric load as calculated by a qualified engineer
- 2 points if the proposed PV array system or other renewable energy systems is large enough to cover no less than 100% of the project's annual common area and site electric load as calculated by a qualified engineer.
- 3 points if a Development incorporates a PV array or other renewable energy systems that are sufficiently sized to create a Net-Zero development based on the overall plans and specifications for the property

E. 3 points for certifying that upon completion the Development will sign up with a Utility Benchmarking Service (UBS) for all utilities including tenant paid utilities. The cost for the UBS should be reflected in the applicant's operating expenses. Tenant leases must be modified to allow owner's access to tenant utility information. The UBS must be made available to RIHousing.

F. 5 points for development that does not involve destruction of fields, forests, agricultural lands or environmentally sensitive land, and/or includes a cluster development in which more than 50% of the land is conserved.

**NEGATIVE POINTS (assessed by RIHousing based on applicant's inability to perform under a previous allocation of LIHTCs).**

- Negative 5 points for having a higher total development cost per unit at the closing of the Developer's previous LIHTC transaction that would have resulted in lower points at the time the proposal was initially scored; provided however that if the developer has secured additional non RIHousing and non-State funding to offset the cost, no penalty will be assessed.
- Negative 5 points for higher LIHTCs per unit at the closing of the Developer's previous LIHTC transaction that would have resulted in lower points at the time the proposal was initially scored.

- Negative 5 points for higher State Housing Grant Resources per unit at the closing of the Developer's previous LIHTC transaction that would have resulted in lower points at the time the proposal was initially scored
- Negative 5 points for Developer not closing their previous LIHTC transaction within 12 months of preliminary approval. Exceptions may be made for circumstances that, in RIHousing's sole determination, were outside the developer's control.

Applicants who are assessed negative points will be required to wait 12 months after receipt of the notification of negative points to apply for a new allocation of LIHTC.

At a minimum an applicant subject to a negative point assessment, must submit an application that meets threshold and results in a score that is equal to or higher than the lowest scoring application in the funding round.

### **C) Scoring Assessment Criteria**

Applicants should note the assessment scoring criteria, requirements and guidance that are applicable to the selection of proposals.

#### 1. Financial Analysis (up to 65 points):

- a) **Total Development Costs:** Development and construction costs will be reviewed for adequacy and reasonableness in accordance with the guidelines established in the RIHousing Developers Handbook. RIHousing will review and score the total development cost per residential home produced and the competitive resources necessary to construct or rehabilitate the homes. RIHousing will use its best professional judgment to determine reasonableness of cost estimates based upon similarly constructed developments and past practice of the development team in delivering projects within budget.

Staff will consider the amount of documentation submitted in support of the proposed costs, sources and uses; the development team's past performance in achieving the costs set forth in prior applications for funding and prior projects; and RIHousing's own expertise and experience with housing developments before presenting their recommendations to the Funding Committee for a final award decision.

- b) Management Plan/Operating Budget: Operating budgets will be reviewed to determine adequacy and reasonableness of each expense line item, including but not limited to management fees, maintenance and administrative costs, replacement reserves, taxes, insurance, and costs of any planned tenant services. Proposed operating budgets will be compared to the applicant's own portfolio as well as similar type developments in the RIHousing portfolio.

Proposed management agents and management plans will be reviewed to determine the acceptability of planned procedures for managing the development's operations.

Existing portfolio performance is a key component of RIHousing's review. RIHousing staff will review the overall risk rating associated with each previously funded project in our portfolio to assess the strength of the owner and management agent, and their ability to address operating challenges over the life of the loan.

For service-enriched housing proposals, management plans will also be reviewed for demonstrated appropriateness and sufficiency of planned services for the target population, the inclusion of a cohesive, well-conceived and financially feasible service program, and the organizational capacity of the service provider(s) to deliver the proposed services.

- c) Leveraging: Projects will be scored based upon cost effectiveness and ability to leverage other uniquely or broadly available funding sources and thereby reduce the need for LIHTCs and or other limited public resources.
2. Serving the Needs of Very Low-income Individuals and Families:

Rhode Island has adopted Open Doors Rhode Island which is a strategic plan to prevent and end homelessness. The plan can be accessed at: <http://ohcd.ri.gov/freq-requested/documents/openingdoorsri.pdf>. The goals of the plan are to end chronic homelessness in 5 years, end veteran's homelessness in 5 years and to end homelessness for families and youth in 10 years.

Up to 6 points will be given to proposals that effectively serve people with income at or below 30% of area median income, are homeless or have special needs.

In accordance with changes to the HUD Section 811 Program under the Frank Melville Supportive Housing Investment Act of 2010, RIHousing was approved to participate in the Section 811 Project Rental Assistance (PRA) program. This program encourages the integration of Section 811 units into larger developments. RIHousing encourages proposals which include integration of Section 811 service enriched apartments. A maximum of 25% of units in a development will be eligible for Project Rental Assistance through the Section 811 program.

3. Rhode Island Based Firms:

To provide employment opportunities for the Rhode Island workforce, points will be given to applicants that certify their general contractors will utilize Rhode Island based subcontractors.

4. Permitting:

There are substantial costs associated with permitting a development. However, significant delays in proceeding to construction can result from various local and state permitting processes. Recognizing the cost/benefit of fully permitting a development prior to the award of financing, RIHousing will provide a range of points for those developments that have received various permitting approvals.

Recognizing the benefit of having (nearly) completed plans and building permits in regard to readiness to proceed, RIHousing will provide up to 8 points for those developments that (1) have been issued building permits, (2) have plans that are at least 75% complete and (3) the application includes a signed schedule of values from the general contractor, determined by RIHousing to be consistent with current pricing, that is the basis for the funding application.

5. Comprehensive Community Development:

Up to 23 points will be given to developments that effectively address the following:

Each application will be evaluated and scored on the extent to which it supports the principles of comprehensive community development (“CCD”). RIHousing has brought together advocates for jobs, the environment, safe homes and the many components that are essential to a good, safe, healthy community. Partners are encouraged to work collaboratively to create neighborhoods where a healthy environment is as valued as safe homes and good jobs. By attempting to reuse existing developed land that has been underutilized or abandoned, CCD will help preserve open space. Recognizing that in the case of emerging growth centers, housing development may precede infrastructure improvement and the development of amenities and workplaces, creative partnerships will result in thriving neighborhoods with good-paying jobs, and homes that are attractive, convenient and affordable. Schools, services, and cultural centers would all be close-by.

CCD is a holistic strategy for efficient use of land and other resources that maximizes open space and discourages sprawl. This strategy includes directing development and reinvestment to existing communities as well as redevelopment and growth in and around planned or existing growth or town centers where higher densities can be supported by public and alternative-technology infrastructure. This development at higher densities includes: compact building designs, infill development, redevelopment and the adaptive re-use of existing buildings. It also includes conservation-minded development in rural communities that result in a more efficient use of land and other resources through the creation of more



traditional, compact neighborhoods. These communities contribute to a strong economy and include good jobs for residents that are nearby and pay a living wage.

These communities have many of the following “Smart Growth” features: mixed land use; part of an overall municipal plan with community stakeholder collaboration; compact design; economically sustainable; aesthetically pleasing; includes a diversity of people, incomes and housing types; is distinctive in character; and is healthy and energy efficient.

CCD encourages collaboration to ensure more effective outcomes. As public and private resources become scarcer, collaboration among all federal, state and local agencies is a key component for successful development in Rhode Island. Collaborations with state and federal initiatives will be encouraged. Priority will be given to developments which can best demonstrate the ability to collaborate and secure resources through a number of federal, state, local and private partners in order to meet their development outcomes.

The proposed scope of work and building design features will be evaluated to ensure that it is comprehensive and will provide for the long-term viability of the housing development, its utility, and the systems of the structure(s). The proposal will also be evaluated based on its potential to meet RIHousing Design Standards including: conformance with applicable laws, regulations, and code requirements; appropriateness of the building and unit plans site design, and amenities to the target population; use of materials and energy conservation measures to enhance durability and operating cost efficiency; and adequacy of estimated construction costs to complete the proposed scope of work.

Site Design:

The proposed site, including any existing improvements, must support the intended population in terms of desirability of location; environmental quality; adequacy of utilities and transportation; proximity and connections to jobs, civic, social, commercial, recreational, religious and cultural services and facilities; and appropriateness of the proposed development to the specific site.

In addition, site conditions will be evaluated in terms of suitability for construction or rehabilitation. For new construction, ledge, wetlands, existence of subsurface contamination, grade, and soil suitability, and base flood elevation are typical considerations. For rehabilitation, existing structural conditions, ease or difficulty of adaptations, abatement of hazardous materials, appropriateness of existing buildings, layout and site plan for the proposed resident population will be considered.

As a general rule, developments will only be eligible for financing if the residential buildings are not constructed on land which is in a base flood elevation (100 year flood) ("Base Flood Elevation") as determined by RIHousing in accordance with the most current Flood Insurance Rate Maps issued by the Federal Emergency

Management Agency (“FEMA”); and comply with other applicable requirements of law, as they may be amended from time to time, including, but not limited to, an Assisted Living Facility, obtaining a license from the Rhode Island Department of Health, if required. RIHousing may consider granting a waiver to the Base Flood Elevation Requirement, if the Developer seeking to construct or rehabilitate a building in a Base Flood Elevation, can demonstrate to RIHousing's satisfaction that upon the occurrence of an event of the magnitude of the 100 year flood (i) there will not be an unreasonable risk of bodily injury or harm to the residents; (ii) the ground floor units, building egress, site egress and parking areas are constructed above 100 year flood elevation; (iii) the structural integrity, systems and interior finishes of the building will not be materially and adversely affected; (iv) the building will remain functional; (v) the construction or renovation of the buildings will not result in increased flooding elsewhere and (vi) the property is covered by flood insurance in strict conformance with RIHousing’s insurance requirements. In addition, all developments located in a 100-year flood plain will be required to provide a flood plain engineering report and evacuation plan (if necessary) prepared by a qualified civil engineer or land surveyor. Developments which receive Federal funding will also be required to meet HUD’s 8-Step floodplain standards. The decision of RIHousing shall be binding and conclusive.

6. Geographic Diversity:

In an effort to provide affordable homes in every community in Rhode Island and to assist communities that have been unable to reach a 10% affordable housing goal, 10 points will be given to developments creating new affordable units located in areas with less than 10% existing affordable housing. Exempt communities with less than 10% affordable housing will be given 5 points. Applicants must demonstrate the need and demand for the housing proposed in the application.

7. Vacant, Foreclosed and Blighted Properties and Infill Lots:

Vacant, blighted and abandoned properties have a negative impact on our neighborhoods and communities. A blighted property exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety and public welfare as documented by a qualified code inspector or individual trained to conduct housing quality standards inspections. A unit must be non-habitable or have failed a HQS inspection to be considered blighted. These properties diminish property values and negatively affect prior investment. An infill lot is defined as a lot in an established and developed neighborhood that previously had a structure or had platted lots that were never developed, and replacement of that structure serves to integrate the streetscape and fabric of the neighborhood. Up to 5 points will be given for applications that address vacant, foreclosed and/or blighted properties or infill development on vacant or blighted neighborhood lots. Applicants must demonstrate how the proposed housing contributes to an overall plan to revitalize and/or stabilize the neighborhood or that builds upon previous investments.

8. Efficiency:

RIHousing strives to ensure that developments are as energy efficient as possible and to the extent financially feasible, incorporates many of the industry's current green building practices. Up to 3 points will be awarded to new construction developments that achieve NGRID's RNC Tier II and Energy Star 3.1 revision 8 standards to obtain a higher level of documented energy efficiency. The additional standards should be itemized for review.

Projects undertaking substantial rehabilitation rather than new construction will be eligible for partial points if they can achieve Tier II of standards under National Grid's program guidelines.

Up to 2 additional points may be awarded to projects that achieve RNC Tier II **AND** meet the State's most current Net Zero or Passive House standards.

RIHousing has been working with National Grid and the Office of Energy Resources to develop strategies for improving energy efficiency in existing and new affordable housing, and to incentivize the use of renewable resources. The recent change in legislation to allow Virtual Net Metering in affordable housing (Chapter 26.4 of Title 39 of the General Laws of Rhode Island (RIGL), entitled "Net Metering" and more specifically "Community Remote Net Metering" as defined at RIGL Sec. 39-26.4-2(1)) is an additional opportunity to leverage these resources.

Up to 3 points will be awarded for developments that include photo voltaic or other renewable energy sources with enough capacity to offset a determined amount of annual operating costs.

Up to 3 points: Utility Benchmarking is becoming an industry best practice to monitor the performance of properties and build a data base of information to inform future funding decisions. Up to 3 points will be awarded for certifying that upon completion, the Development will sign up with a Utility Benchmarking Service for all utilities including tenant paid utilities. Borrowers who have received points under this category on previous projects will be reviewed to determine if they are complying with the Utility Benchmarking requirements of previous awards.

9. Preservation of Greenfields:

Up to 5 points: In recognition of the need to preserve Rhode Island's diverse natural resources, RIHousing has placed high priority on protection of our working farmlands and forested areas. Up to 5 points will be provided for a proposal that does not involve destruction of fields, forests, agricultural and other environmentally sensitive land and/or includes a cluster development in which more than 50% of the land is conserved.

## **NEGATIVE POINTS**

RIHousing has the right to assess negative points, as outlined on page 39, based on applicant's inability to perform under a previous allocation of LIHTCs in the following categories.

Applicants who are assessed negative points will be required to wait 12 months after receipt of the notification of negative points to apply for a new allocation of LIHTC. At a minimum an applicant subject to a negative point assessment, must submit an application that meets threshold and results in a score that is equal to or higher than the lowest scoring application in the funding round.

### **D. Non-Profit Set-Aside, 9% Credits**

In accordance with Section 42(h)(5)(B) of the Code, RIHousing will set-aside a minimum of ten percent (10%) of the total LIHTC allocation available for qualified non-profit organizations that materially participate as determined by RIHousing in the development and management of the project throughout the compliance period under the meaning of the Code. These credits will be administered in the same manner as LIHTCs allocated to for-profit developers. While providing for a minimum set-aside, this provision will not impose a ceiling on the total percentage of credits which may be allocated to non-profit entities.

In order to qualify for credits from the non-profit set-aside, organizations must certify that they are a qualified non-profit organization; and any substitute owner during the compliance period must continue to qualify under that set-aside. The term "qualified non-profit organization" means any organization that is described in section 501(c)(3) or (4), is exempt from tax under section 501(a), and includes as one of its exempt purposes the fostering of low-income housing.

RIHousing recognizes the important contributions and added value that non-profit developers can bring to development activities. Non-profit developers include community development corporations and housing service providers which often have important connections to the community where the housing is located and frequently provide extensive additional services to residents within the development and to other residents of the neighborhood and larger community. RIHousing has a strong and successful history of working with non-profits groups to build healthy and vibrant communities in Rhode Island and will continue to recognize that success in its allocation process.

### **E. Assisted Living Program**

LIHTCs from the state per capita allocation and those provided through tax-exempt bond financing are available to applicants proposing assisted living

developments, provided that the proposal identifies long term funding for essential services.

#### **F. Supportive Housing**

LIHTCs from the state per capita allocation and those provided through tax-exempt bond financing are also available to applicants proposing permanent housing developments with supportive service options for residents. Critical to the evaluation of these proposals will be the availability and commitment of sustainable funding for the proposed services and operating or rental assistance to assure long-term feasibility.

LIHTC regulations prohibit sub-leasing of units to agencies. Owners should not enter into a master lease agreement with service providers. Tenants must execute a lease for a unit. A contract between the owner and service provider should be executed to ensure the provision of services for a tenant.

### **IV. TAX EXEMPT FINANCING WITH 4% CREDIT**

Applications for tax exempt financing are currently received on a rolling basis. While proposals utilizing tax-exempt bond financing with 4% credits may not be required to participate in a competitive funding process, all development proposals must meet the requirements of the Qualified Allocation Plan and Developers Handbook. These requirements include, but are not limited to, satisfactory underwriting review by RIHousing; restrictions on general requirements, builder's overhead and profit, legal fees, and management fees; basic design and construction standards; and the payment of underwriting, compliance monitoring, and LIHTC allocation fees.

Priority for tax exempt financing and 4% credits will be given to projects that preserve existing affordable housing developments and that use RIHousing as the permanent lender.

### **V. UNDERWRITING GUIDELINES**

RIHousing has replaced its construction costs per square foot guidelines with total development cost ("TDC") limits based on type of construction which will be adjusted annually. RIHousing guidelines for general contractor fees, reserve requirements, developer's fees, consulting and legal fees can be found in the RIHousing Developer's Handbook at <https://www.rihousing.com/developers-handbook/>. The costs associated with these guidelines must be incorporated into the TDC for all proposals requesting LIHTC from RIHousing. The guidelines may be amended from time to time through Program Bulletin.

## VI. FEE STRUCTURE FOR LIHTC PROPOSALS

All LIHTC proposals, including those seeking credits from the State's allocated pool or in conjunction with tax-exempt bond financing, shall be assessed the following fees:

### A. Application Fees:

LIHTC proposals will be assessed a \$1,000 non-refundable application fee, payable upon application submission.

### B. Underwriting Fee:

RIHousing will charge an underwriting fee for the review of all 4% and 9% credit proposals

Up To \$1,000,000	\$20,000
Up To \$3,000,000	\$25,000
Greater than \$3,000,000	\$35,000

If RIHousing provides the first mortgage financing, these underwriting fees will be applied toward RIHousing's origination fees. However, the underwriting fee will be charged if RIHousing is not the permanent senior lender. A **minimum** combined origination/underwriting fee of \$20,000 will be paid if the loan amount is less than \$1,000,000.

### C. Allocation Fees:

Approved LIHTC proposals will be assessed the following LIHTC allocation fee, payable at closing:

For 9% LIHTC Developments: 0.5 % of the ten-year allocation amount  
For 4% LIHTC Developments: 1.0 % of the ten-year allocation amount

## VII. COMPLIANCE MONITORING

The IRS requires that the allocating agency monitor compliance with Section 42 of the Code and all applicable regulations on a project-by-project basis. This requirement became effective January 1, 1992 and applies to all buildings for which the LIHTC is, or has been, allowable at any time. RIHousing may perform compliance monitoring or may contract with an agent to perform this function. The monitoring procedure includes provisions for record keeping and record retention, annual certification and review, on-site records review, building inspection and notification to owners and the IRS of non-compliance. Please refer to RIHousing's Compliance Monitoring Manual which was updated in 2019 (the "Compliance Manual") for detailed monitoring requirements.

[https://www.rihousing.com/wp-content/uploads/RIHousing\\_LIHTC\\_Compliance\\_Manual\\_March\\_2019.pdf](https://www.rihousing.com/wp-content/uploads/RIHousing_LIHTC_Compliance_Manual_March_2019.pdf)

The compliance monitoring procedure is adopted pursuant to the Code. RIHousing or its agent reserves the right to amend this procedure as may be necessary or appropriate to conform to applicable changes in the Code or regulations. In addition, RIHousing or its agent may adopt further monitoring forms and procedures as part of its Compliance Manual or as otherwise deemed appropriate.

On February 13, 2019, the IRS approved final regulations to amend the compliance monitoring requirements for LIHTC projects. Owners and Property Managers are encouraged to read the final regulations here:

[https://www.us-hc.com/images/fedreg\\_022219-02.pdf?utm\\_content=d6c385225ac822b53dea06973d4c2b24&utm\\_campaign=IRS%20Amends%20LIHTC%20Compliance%20Monitoring%20Requirements&utm\\_source=Robly.com&utm\\_medium=email](https://www.us-hc.com/images/fedreg_022219-02.pdf?utm_content=d6c385225ac822b53dea06973d4c2b24&utm_campaign=IRS%20Amends%20LIHTC%20Compliance%20Monitoring%20Requirements&utm_source=Robly.com&utm_medium=email).

The changes include, but are not limited to,

- Changes to Sample Size – The required minimum sample size for low-income unit and certification inspections is now solely based on the sample size required by the Minimum Unit Sample Size Chart provided in Revenue Procedure 2016-15, referenced as “Table to Paragraph (c)(2)(iii)” in the final regulations.
- Changes to Notification of Inspection Requirements: The reasonable notice of inspection time period is being reduced from 30 days to 15 days, with extensions allowed for extraordinary circumstances. See 1.42-5 (iii)(c)(3)

Upon project completion owners are required to obtain an independent third-party audit of 100% of the initial qualifying tenant files. This audit cannot be performed by the investor. Documentation of such audit must be submitted to RIHousing along with the Initial Qualifying Tenant (“IQT”) report, the 8609(s) and the Cost Certification. The IQT must list the initial qualifying households and must coincide with the initial Tenant Income Certifications on file. Owners and agents are also required to attend a welcome meeting with RIHousing Asset Management /LIHTC Compliance and Financial staff.

**APPLICANTS AND OWNERS ARE ADVISED THAT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 OF THE CODE IS THE RESPONSIBILITY OF THE OWNER OF THE DEVELOPMENT. MONITORING OF THE DEVELOPMENT BY RIHOUSING OR ITS AGENT DOES NOT IN ANY MANNER AFFECT, MODIFY, OR SUBSTITUTE FOR THIS RESPONSIBILITY. MONITORING BY RIHOUSING OR ITS AGENT DOES NOT CONSTITUTE A DETERMINATION OF ANY KIND REGARDING THE DEVELOPMENT’S ELIGIBILITY FOR THE LIHTC UNDER SECTION 42 OF THE CODE.**

**A. Recordkeeping and Record Retention**

Recordkeeping: For each year in the compliance period, which is equal to fifteen taxable years beginning in the first year the credit is taken, the owner shall maintain records for each building in the project showing the:

- 1) Total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).
- 2) Percentage of residential rental units in the building that are low-income units.
- 3) Rent charged on each residential rental unit in the building, supporting documentation, and the applicable utility allowance.
- 4) Number of occupants in each low-income unit.
- 5) Annual income certification of each eligible tenant.
- 6) Documentation to support each eligible tenant's income certification.
- 7) Student status of all household members.
- 8) Waiting Lists and marketing/advertising information.
- 9) Unit vacancies in each building and information that shows when, and to whom, the next available units were rented.
- 10) Eligible basis and qualified basis of the building at the end of the first year of the credit period.
- 11) Character and use of the non-residential portion of any building included in the building's eligible basis that are resident facilities available on a comparable basis to all residents and for which no separate fee is charged for use of the facilities (or facilities otherwise reasonably required by the development).

Record Retention: The owner shall retain records relative to the first year of the credit period for at least six years beyond the due date (with extensions) for filing the tax return for the last year of the compliance period of the building. The owner shall retain the records described above for all subsequent years in the compliance period for at least six years after the due date (with extensions) for filing the federal income tax return for that year.

Additionally, for each year that any Agreements remain in effect after the compliance period, the owner shall retain records adequate to demonstrate compliance with the terms and conditions of the Agreement, including, but not necessarily limited to, income of tenants and rents charged at the development. The owner shall retain the records pertaining to a particular year for at least six years following the close of that year.



## **B. Certifications and Reporting**

Annual Certification: The owner of every project that has received LIHTCs must submit to RIHousing by January 31<sup>st</sup> of each year during the compliance period and the extended use period an owner's Annual Certification of Continuing Program Compliance and evidence of Certification of LIHTC Training. As required under U. S. Treasury Revenue Regulation 1.42-5, the owner shall certify to RIHousing under the penalty of perjury, whether for the preceding 12-month period:

- 1) The project was continually in compliance with the terms and conditions of its Agreements with RIHousing.
- 2) The project met either (i) the 20-50 test under Section 42(g)(1)(A), (ii) the 40-60 test under Section 42(g)(1)(B) or (iii) the Average Income test, whichever minimum set-aside test was applicable to the project. The 20-50 Test means that a minimum of 20% of the project's units were set-aside for tenants at 50% of the AMGI at LIHTC restricted rent levels. The 40-60 test means that a minimum of 40% of the project's units were set-aside for tenants at 60% of the AMGI at LIHTC restricted rent levels. The Average Income test means that Owners that elect Income Averaging must have an average income targeting that does not exceed 58% AMI
- 3) There was any change in the applicable fraction as defined by Section 42c(1)(B) of any building in the project, and if there was a change, a description of that change.
- 4) The owner has received an annual income certification from each low-income tenant, and documentation to support that certification.
- 5) Each low-income unit in the project was rent-restricted under Section 42(g)(2).
- 6) All units in the project were for use by the general public (as defined in Treasury Regulation 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred in the project.
- 7) Each building in the project was suitable for occupancy, taking into account local health, safety and building codes.
- 8) There was any change in the eligible basis (as defined in Section 42(d)) of any building in the project, or there was a change, and information regarding the nature of that change.
- 9) All tenant facilities included in the eligible basis under Section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building.

- 10) If a low-income unit in a building becomes vacant during the year, reasonable attempts were made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any unit in the building was or will be rented to tenants not having a qualifying income.
- 11) If the income of the tenant of a low-income unit in a building increases above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the building was or will be rented to tenants having a qualifying income.
- 12) An extended low-income housing commitment as described in Section 42(h)(6) was in effect (for buildings subject to Section 7108(c) of the Revenue Reconciliation Act of 1989).
- 13) All low-income units in the project were used on a non-transient basis except for permanent supportive housing for the homeless provided under Section 42(i)(3)(B)(iii) or single room occupancy units rented on a month-to-month basis under Section 42(i)(3)(B)(iv).
- 14) The project was continually in compliance with the Violence Against Women Reauthorization Act of 2013 and all applicable implementing regulations.

Additional Information as Required: The owners of all LIHTC projects will also be required to submit to RIHousing information on tenant income, occupancy, and rent for each low-income unit, in the form and manner designated by RIHousing. RIHousing reserves the right to require owners of all low-income projects to submit additional information as it deems necessary.

The 2008 Housing and Economic Recovery Act (HERA) included a provision directing state HFAs to collect and submit to HUD demographic and economic information on tenants living in LIHTC properties, including LIHTC projects in the Extended Use period. RIHousing requires owners/agents to upload and report tenant data monthly utilizing the Web Tenant Compliance (WTC) online portal which allows property managers to enter tenant information directly into a web-based compliance reporting system. The information is immediately uploaded to RIHousing's HDS (Housing and Development Software) database and is then transmitted directly to HUD.

### **C. Records Review**

In accordance with Section 1.42-5(c)(2)(ii), all projects will be monitored for compliance by the end of the second calendar year following the year the last building in the project is placed in service. Subsequently, IRS regulations require that at least once every 3 years, state agencies conduct on-site inspections of all buildings in the project. These inspections will include a sample size in accordance with IRS guidance of the project's low-income units and review the certifications and supporting documentation along with the rent records for all the tenants living

in the units. Properties directly financed by RIHousing and/or monitored under other federal or state programs administered by RIHousing (such as HOME or Section 8) will be reviewed annually. Additionally, LIHTC projects whose operations do not meet RIHousing's financial and operating management standards may be subject to more frequent examinations.

RIHousing reserves the right to perform a records review of any low-income housing project at least through the end of the compliance period and for any additional term as defined in the RIHousing Extended Use Compliance Monitoring Policy.

#### **D. Inspection**

RIHousing may conduct annual physical property and unit inspections, as well as tenant file reviews, on all of the LIHTC developments monitored by RIHousing. RIHousing will randomly select the low-income units to be inspected in each development. The number of units to be inspected will be a sample size in accordance with IRS guidance.

Inspections of buildings, grounds and LIHTC units will be conducted using HUDs Uniform Physical Conditions Standards (UPCS) protocol.

RIHousing retains the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period and for an additional term as defined in the RIHousing Extended Use Compliance Monitoring Policy.

#### **E. Notification of Non-Compliance**

RIHousing defers to the Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (the "Guide") to evaluate non-compliance findings. The scope of the Guide is limited to guidelines for preparing Form 8823 for submission to the IRS. Taxpayers are responsible for evaluating the tax consequences of noncompliance with IRC Section 42. The Guide is available on the IRS website at: <https://www.irs.gov/pub/irs-utl/lihc-form8823guide.pdf>

RIHousing will look to the Guide in evaluating compliance with IRC Section 42 and in determining whether a notice of noncompliance should be issued. As outlined in Section 42(m)(1)(B)(iii), RIHousing or its agent has the responsibility to notify the IRS of non-compliance with the LIHTC provisions by completing Form 8823 "Low-Income Housing Credit Agency Report of Non-Compliance." In the event that RIHousing or its agent learns of an event of non-compliance, it will send a letter to the project's owner describing the condition and, where appropriate, recommending actions to correct the problem. The agency shall retain

records of non-compliance or failure to certify in accordance with Treasury Regulations.

The owner of the low-income housing project shall have 30 days from the date of the notice to correct and supply proof that the noncompliance has been corrected (e.g. copies of income certifications/lease/rent rebate, etc.).

If RIHousing determines that the clarification from the owner on the noncompliance issue establishes that the owner was always in compliance, then no Form 8823 is issued, and the owner is notified within five (5) business days.

If RIHousing determines that there was noncompliance and the issue is now remedied, then Form 8823 will be filed with the IRS and the owner will be notified no later than 45 days after the end of the time allowed to the owner to take remedial action.

The correction period may be extended in the sole discretion of RIHousing for up to an additional 60 days upon the written appeal of the owner (received on or before the expiration of the 30 day period) requesting such an extension, if the agency determines that the owner is making a good faith effort to provide the missing information and/or bring the project into compliance with the provisions of Section 42 of the Code.

RIHousing may thereafter extend the correction period for up to six months, but only if RIHousing determines in its discretion that there is a good cause for granting the extension. In the event of non-compliance during the extended use period, RIHousing will provide the owner a period of sixty (60) days to correct the violation. Failure to correct non-compliance during the extended use period may result in an owner designation of “not in good standing” with RIHousing. This designation may be used as a determining factor in providing future allocations of LIHTCs.

#### **G. Casualty Loss**

Unfortunately, disasters or accidents sometimes damage or destroy LIHTC units or properties. Such losses that are sudden, unexpected and not gradual or the result of owner negligence, are called casualty losses. A hurricane or a kitchen fire can result in a casualty loss. When these occur, it is the responsibility of the owner/agent to report the loss to RIHousing as soon as possible after an incident that results in a unit or building going off-line. Furthermore, the owner must submit a plan to RIHousing that sets a timeframe for restoration of the lost buildings or units.

Casualty loss that is not part of a presidentially declared disaster invokes no recapture if the loss is returned to a good condition within a *reasonable period*. This period is no more than 24 months after the end of *the year* that loss occurred.

However, credits cannot be claimed while the unit(s) or building(s) are offline. For presidentially declared disasters, both recaptured and disallowance of credits are avoided if the loss is restored in a *reasonable period*. In the case of a declared disaster, the maximum reasonable period is 25 months *after the month* that a disaster is declared. For either type of casualty loss, RIHousing may impose a lesser reasonable period based on specific details as to the severity of loss.

For LIHTC projects, RIHousing must report the loss and restoration to the IRS. If the units have not been fully restored, RIHousing will submit a copy of the owner's plan and timeframe for replacement along with an uncorrected 8823 to the IRS. Once all units have been restored and are available for occupancy, RIHousing will issue a corrected Form 8823 to show the units are back in compliance.

If an owner fails to report a casualty loss to RIHousing promptly, RIHousing will report the incident as noncompliance to the IRS using Form 8823 as soon as compliance staff becomes aware that a loss event occurred.

**Displaced Persons.** For a period after a presidentially declared disaster, LIHTC properties across the nation may house persons displaced by the disaster *regardless of their income*. RIHousing will issue bulletins following specific disasters, along with directions and how long the temporary allowance to house disaster victims will last.

#### **H. Liability of the Owner**

Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. RIHousing's obligation to monitor for compliance with the requirements of Section 42 does not make it responsible for the owner's noncompliance.

#### **I. Annual Compliance Training**

The owner must certify that at least one member of the on-site management staff attends training for compliance in managing a LIHTC project at least once annually. The training must be specifically related to the LIHTC program. Proof of training and/or Certifications of training must be submitted to RIHousing by January 31st of each year.

### **VIII. EVENTS OF RECAPTURE**

A full recapture of credits occurs if the building fails to meet the minimum set-aside requirement. A partial recapture of credits occurs if the building's low-income occupancy percentage decreases, but not below the minimum set-aside level, and/or if eligible basis decreases. The potential effect of non-compliance is to increase taxes in the year of non-compliance based on all previous years that the credit was earned. The excess of the credit actually earned each year over the credits that would be allowed if the credits were claimed ratably over the fifteen-year compliance period (the accelerated portion of the credit) plus

interest is recaptured. In this event, IRS Form 8611 “Recapture of Low-Income Housing Credit” must be filed by the project’s owner and retained for three years following the Compliance Period.

It is important to note that there are additional items that trigger recapture. Please refer to Section 42 of the Code and the RIHousing website for important Program Bulletins and Notices regarding changes/revisions to policies.

## **IX. COMPLIANCE MONITORING FEES**

### **A. Compliance Monitoring Fees:**

In order to offset the cost of compliance monitoring, a low-income housing unit fee will be assessed to all LIHTC developments per LIHTC unit. This fee will be due and payable no later than March 31<sup>st</sup> of each year. This fee will be reviewed on an annual basis and may be increased to cover administrative costs at RIHousing’s discretion. In accordance with the RIHousing Extended Use Compliance Monitoring Policy, fees will be assessed through the term of the Extended Use Period. RIHousing reserves the right to increase compliance monitoring fees for Owners who elect Income Averaging.

## **X MISCELLANEOUS**

RIHousing recommends that owners/agents stay current with updated information by logging into our website at <https://www.rihousing.com/> and viewing and downloading important information outlined in our Program Bulletins and Notices.

## **XI. APPROVAL OF THE GOVERNOR**

I, Gina M. Raimondo, Governor of the State of Rhode Island and Providence Plantations, do hereby signify my approval of this 2021 LIHTC Qualified Allocation Plan for the distribution of federal LIHTCs in this State, in conformance with Section 42 of the Internal Revenue Code.

Signed: \_\_\_\_\_  
Gina M. Raimondo, Governor

Date: \_\_\_\_\_, 2020