

2011 QAP COMMENTS and DSHA RESPONSE

DSHA would like to thank all our partners for their feedback and comments to the 2011 Qualified Allocation Plan (QAP). While DSHA has reviewed your comments and made some immediate changes to the 2011 QAP, DSHA will continue to conduct additional research and analysis for further revisions for the 2012 QAP.

DSHA has summarized the comments and feedback by category.

PRESERVATION COMMENTS:

- Maintain the \$1,101,420 preservation rehabilitation pool set-aside for proposals involving the preservation and rehabilitation of existing multifamily rental housing in the final 2011 QAP.
- Increase the further prioritization of preservation for per unit and building costs to \$70,000 for four points and include all the typical costs for the units' hard costs as well as the construction
- DSHA establishes a 4 point category for projects whose hard costs exceed \$50,000. How do you measure that? Site costs are excluded, failed storm water management systems and negative grading, separate laundry areas should be included. Recommend that a point category be provided for spending \$x on construction, period.
- The hard cost /rehabilitation costs should include community rooms and maintenance areas that are contained within the building envelope. Also, please define the exterior work that is not an integral part of the building. Reduce the \$50,000 per unit costs.
- The CNA will need to be adjusted to take this into consideration.

DSHA RESPONSE: DSHA conducted a Preservation Analysis in 2009 to assist DSHA with further defining Preservation within the QAP and other housing policies at DSHA. DSHA looked at the Delaware portfolio of assisted and subsidized properties as a whole, using nationally recognized risk factors and the reports from other HFAs. The risk factors provided DSHA a better estimate of the type and scope of need to further prioritize preservation. The research indicates that there is very little risk of losing sites to conversion to market rate. However, the research indicates the RD portfolio in particular is older and in more need of substantial rehabilitation. In addition, the bulk of projects needing substantial rehabilitation are family properties.

While DSHA values all the components of a development; operations, amenities and physical condition -- DSHA wants to ensure that all preservation projects compete equally by analyzing the costs to rehabilitate units and buildings. In addition, because of the limited funds and tax credits allocated to small states like Delaware, DSHA wants to meet the needs of preservation projects that are in more need of unit and building rehabilitation. An extensive study of rehabilitation costs for properties that have received credits over the last 5 years indicated that the unit and building costs consistently exceeded \$50,000.

The Capital Needs Assessment (CNA) should be developed based upon the architect's site inspection and existing material life span (see pages 37-45 of the 2011 QAP Attachments). The CNA is a tool that should capture this information and will assist in compiling the information for unit and building costs. DSHA's cost analysis form (Page 22 and 23 of the LIHTC application) will assist in the breakdown of those costs and will be used to determine the costs for ranking and point purposes.

- PRESERVATION BY DESIGN - The current QAP includes a small number of incentive points toward increasing the compliance period and also for conversion to homeownership by residents. The State could expand its options for maintaining affordable housing.

DSHA RESPONSE: DSHA will take into consideration for the 2012 QAP after more research and analysis is conducted.

- On page 43, the points for preservation should be reinstated, especially, if the non-profit organizations are competing in a separate pool.

DSHA RESPONSE – Preservation projects may receive points for Preservation regardless if the entity is a non-profit or for-profit. DSHA has also included the Preservation point category in the Ranking section of the 2011 QAP.

COMMUNITY OF OPPORTUNITY COMMENTS:

- A new threshold section entitled "Communities of Opportunity" has been added. This new threshold criteria requires that any new construction project "promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income residents or in areas containing a high proportion of affordable rental units (no other low-income housing in immediate area - within 3 block area)." Phased developments are now prohibited under this rule. The use of "3 block area" is ambiguous. In some areas a block could be a mile long and others a few hundred feet.
- This eliminates phased developments. This also has a significant impact on small towns where multi-family zoning is limited.
- The same issue addressed in the HDF Supplement (on page 11) references the census tracts as you described in the last forum. It makes sense if the approach utilized in the HDF Supplement is also incorporated in the threshold section of the QAP for several reasons.

DSHA RESPONSE: DSHA has removed this category as a threshold and has added an introduction paragraph to page 8 of the 2011 QAP encouraging applicants to promote greater housing choices and housing opportunities. DSHA may re-introduce this category as a threshold after further analysis and conclusion of the State's study on impediments to fair housing in the 2012 QAP.

GENERAL CONTRACTOR APPROVAL PROCESS AND BIDDING PROTOCOL:

- DSHA should allow for negotiated bidding and stay out of the builder/contractor approval process. If a contractor is insured and has bonding then leave it to the developer/owner who they are.
- The general contractor bid requirements are completely inappropriate and place undue risk on the developer and the lenders. This is not required by HUD or any other tax credit agency. This needs to be eliminated and developers need to be able to select their own team members since we are guaranteeing their performance.
- The QAP requires the developer/owner to invite and receive 3 bids from 3 contractors. The section goes on to require that any bidder invited must be "pre-qualified" by DSHA. The section references the required General Contractor Certification and Questionnaire. This document is basically the general contractor job

application to receive the DSHA endorsement. In addition, by "pre-qualifying" general contractors and by virtue of the GC Questionnaire, DSHA is saying to the development community that they have underwritten the general contractors they have approved. Allow negotiated bids.

- We believe a member of the Development Team should be the Construction Manager and/or GC. It's a critical partner in order to successfully undertake and complete the project. We believe it's important to engage this service early in the development of the application rather than later. The cost savings that could be achieved are not worth the potential risk and liability to the Developer and DSHA.
- If costs and/or bids come in lower than original estimates in the application, will the application be re-ranked thereby losing their allocation if scoring is that tight.

DSHA RESPONSE: DSHA bidding protocol will not apply to applicants seeking only tax credits from DSHA (either through the competitive cycle or tax-exempt bond financing). LIHTC properties seeking HDF, HOME or other state financing will continue to be subject to the bidding protocol.

Bidding protocols for construction contracts are pervasively used by other state and federal governments and private agencies as a means of assuring that expenditures of resources are tested by a fair market. Competitive bidding has beneficial results and is the best tool for DSHA to stretch scarce resources available for LIHTC applicants seeking GAP financing. DSHA provides more soft or deferred mortgage funding through the HDF or HOME Program on LIHTC properties than most other states in the country and DSHA has fiduciary responsibilities for all funds lent by the State of Delaware. This policy has enabled DSHA to save millions of dollars and has allowed DSHA to provide additional loans to other well deserving LIHTC or HDF properties. Any savings or increase of development costs directly impact lending resource funding amounts. However, DSHA does appreciate the feedback on this issue and will continue to review the process.

The General Contractor is not selected until the plans and specifications have been completed and approved by DSHA and bids have been received. This time period is after the application deadline. The overhead and general requirements are a negotiated amount between the applicant and contractor during the bidding process (percentages cannot exceed DSHA's requirements) and this process already has proven cost savings. Applications are ranked prior to any bidding being completed and are not re-ranked after that point.

DSHA does not endorse any General Contractor and all General Contractors are welcome to receive an application from DSHA. The General Contractor and bidding protocol policy does not prohibit an identity of interest General Contractor from bidding on the work. The policy only requires DSHA annual approval of each General Contractor. The Developer must select at least three of the approved General Contractors to bid on the construction work, which can include any identity of interest General Contractors of the developer.

- Debarment of a General Contractor - On page 29 of the Attachments to the QAP under "General Contractor Requirements" it reads: If the General Contractor does not successfully complete warranty items from ongoing or previous projects within 45 days of inspection, Contractor will become ineligible to bid on future projects unless such corrective actions is completed. This policy needs to be removed until DSHA can develop language that is reasonable and provides a means to rectify any issues.

DSHA RESPONSE: There is no "Debarment of a General Contractor" policy at DSHA. DSHA has removed this section from the bidding protocol and will revise the DSHA's Mortgagor's Draw Requisition Process and Cost Certification Guide to ensure procedures are in place for follow-up warranty issues with corrective time periods. In addition, DSHA will also manage warranty issues through the retainage requirements and/or other settlement procedures.

ELIGIBLE STATE BASIS BOOST COMMENTS:

- If a project is not financially feasible they should not be eligible for a basis boost. The only projects that should be allowed a basis boost are those in DDA's.
- Do projects that are in a Qualified Census Tract or Difficult to Develop Area get an additional 30% boost? DSHA is stating that it is not automatically provided and that the application for such a project should only utilize a 100% calculation for the tax credits and not use a 130% calculation. Is this correct?
- Page 24, the QAP reads "No applications will be accepted with a basis boost included in the tax credit calculation." This implies that "No" applications will be accepted if they contain a basis boost, including applications that are in a QCT or DDA. Please revise the language to clarify this.

DSHA RESPONSE: There are two different basis boosts in the LIHTC program; the Federal Basis Boost and the Eligible State Basis Boost. Applications in a Qualified Census Tract (QCT) and or Difficult Development Areas (DDA) are eligible for a Federal Basis Boost and can include the Federal Basis Boost in their application. DSHA has clarified the Eligible State Basis Boost language throughout the 2011 QAP. All applications must be submitted without the request of an Eligible State Basis Boost. After DSHA determines all applications have met threshold and the ranking has been released, DSHA may utilize up to 130% Eligible State Basis Boost for unforeseen matters during the final underwriting process. The 2008 HERA law allows states to provide an Eligible State Basis Boost up to 130% to LIHTC applicants.

SPECIAL NEEDS:

- Recommend that "developmentally disabled" be developmental disabilities" which would result in the following: "Persons with intellectual disabilities/developmental disabilities

DSHA RESPONSE – DSHA will make the recommended change.

- Under Special Needs Housing, the 2010 QAP states the following: "Developments that provide permanent housing for persons with special needs are awarded five (5) points." However, the proposed 2011 Plan only awards 3 points to developers who meet this threshold requirement proposed amendment and encourages DSHA to reinstate the 5 point award for developments which provide permanent housing for people with disabilities.

DSHA RESPONSE – DSHA will make the recommended change.

SOCIAL SERVICES:

- We feel that by mandating social services be provided at least 4 times per year is eliminating some valuable social services that are only necessary 1 time per year. Tax preparation is a great service to provide to lower income households. It should be an allowable service. In addition, why can't collaborative partnership include off-site activities, especially when the off-site facility will be better equipped and not a detriment to travel?

- Arbitrarily picking a number like 4 times a year for services does not make sense. What's the basis for 4 times? With the limited budgets and constraints on service providers it's a crime to ask for designated services at a specific address.
- Social Services has been redefined to exclude any service that is not offered at least 4 times a year. For a few years now, we have partnered with an agency in Georgetown, Delaware to provide tax preparation services to our residents. The value of a social service does not rely upon how regular it is.

DSHA RESPONSE: The Social Service ranking category has been part of DSHA's QAP since 2001 and is an important component for residents and a successful LIHTC property. Social Services are a requirement of the Extended Use Agreement between the owner and DSHA, if the owner received points for providing a certain number of social services during the compliance and extended use periods. During DSHA's LIHTC monitoring visits, we find at times, owners have not provided the social services for residents that were promised at application and have violated their Extended Use Agreements.

In the past QAP's, DSHA has used the term "regular" for social services. The term regular seemed to cause some confusion during the application process and the compliance period. DSHA has further defined regular to mean at least four times a year. Quality, comprehensive on-site services for residents should be provided over a full year of the resident's occupancy and further defining the term regular will promote owners to comply with their Extended Use Agreements. Many agencies that provide tax services for residents provide other services as well and can include tax services as part of their overall social services contract with the owner.

The operating expense proforma may include costs for social services, when feasible.

SITES AND NEIGHBORHOOD STANDARDS

- We support the incentives included in DSHA's draft QAP for access to community amenities as well as for using existing housing in developments supporting community revitalization plans. By including these points, DSHA acknowledges that affordable housing is part of well functioning, sustainable communities. We commend DSHA for awarding points to projects located near public transit and urges DSHA to expand incentives for preserving existing affordable housing near public transportation.
- We believe the 1 mile radius for Kent and Sussex compared to the ½ mile for New Castle does not fully take into consideration rural characteristics.
- Protecting Environmental Resources - this does not take into consideration many rural towns. Many towns were built around the railroad in Kent and Sussex County. 1000 feet may seem small, but could significantly impact rural multi-family projects for this category.
- The 1 mile radius for rural areas is too small. Two miles would be more reasonable.
- If 3 RD deals are packaged together and only one of them is in close proximity to services, how does the score get allocated?

DSHA RESPONSE: DSHA will consider allowing for higher radius (1 ½ miles for rural areas in Kent and Sussex Counties) for the Access to Services category. Services for residents at LIHTC properties are preferred in walk-able communities and DSHA may re-evaluate the radius in 2012. There are 12 different services that are obtainable to receive 7 points in the Access to Services category.

For packaged RD projects, the maximum combined points available for Sites and Neighborhoods will be 15 points regardless of how many RD sites are in one packaged application.

- Location category awards points to sites based on the percentage of the site's perimeter that is bordering on existing development. Higher points are awarded to infill sites (75% of perimeter bordering developed parcels) than to projects that are simply "contiguous" (25% of perimeter bordering developed parcels). How is this going to be measured?

DSHA RESPONSE: An existing development does not necessarily mean a "multi-family development" but can be any developed parcel. Site visits may be conducted to determine this category, if necessary.

COMMUNITY COMPATIBILITY:

- Are the State Strategies for Policies and Spending even finalized? Community Design should be eliminated. This issue is controlled by local government through the land use process and a state entity like DSHA has no business dictating subjective standards.
- A nonprofit new construction application has 7 more points available to them in contrast to a non-profit preservation application. This is not equitable and the non-profit new construction project instantly has a 7 point advantage.

DSHA RESPONSE: The State Strategies for Policies and Spending, formerly known as Liveable Delaware, is a final policy of the State of Delaware and has been part of the QAP since 2001. The Community Compatibility ranking section is a new point category that will align with improvements to the current State Strategies for Policies and Spending that the State is initiating for continued smart growth.

Preservation non-profit applications are eligible for 10 additional points for Preservation projects and DSHA has revised the Community Compatibility to 10 points for New Housing Creation so that all non-profit applicants are at the same advantage.

ENERGY AND GREEN CERTIFICATIONS

- We enthusiastically supports the green building incentives included in DSHA's scoring criteria and commend DSHA for including consideration for green building practices and energy efficient design features in Delaware's QAP. However, we urge DSHA to consider developing a more comprehensive set of criteria, keeping in mind, that preservation of existing affordable housing is fundamentally green. In order to strike a balance between promoting Green Communities in your final QAP, we urge you to include Enterprises Green Communities in your final QAP. Green Communities has developed a comprehensive approach to environmentally sustainable, tenant friendly homes, which includes tested standards for healthy building materials and recognizes the varying challenges between new construction and rehabilitation.

DSHA RESPONSE: DSHA will consider for the 2012 QAP after additional research and analysis.

- DSHA has added two certifications under the Design Standards. They are "Base Level Green Standards" and "Base Level Energy Standards". These certifications were taken from certifications contained in Maryland's Multifamily Rental Financing Program Guide. These certifications seem to be required. What is the real purpose of these certifications? Please take the time to make sure they fit with the Delaware QAP. One inconsistency was the possible amenity points for recycling and the recycling center as a requirement.

DSHA RESPONSE: DSHA has revised the base level green certification and removed the recycling center requirement and recycling will remain an amenity in the 2011 QAP. Several stakeholders noted that DSHA's green and energy requirements were spread out in the QAP and DSHA's minimum construction standards. In an effort to centralize DSHA's green and energy standards, DSHA reviewed other state's criteria and determined Maryland's Certification was a better fit and used the certification(s) as a guide. It was further recommended that DSHA also introduce Enterprise Green Communities as part of the QAP as additional initiatives for DSHA's green and energy plans. DSHA will consider those initiatives in the 2012 QAP after additional research and analysis.

- It is stated that all Builders/Contractors shall be Delaware Energy Star Partners and/or Builders. If this is going to be a requirement/approval process of a builders who is verifying the accuracy? In addition many of the contractors approved in the last round are not listed on the Energy Star site.

DSHA RESPONSE: Energy Star Partners and/or Builders are required as part of DSHA's minimum construction standards. Energy Star Partner is a certification program that should be renewed each year. DSHA has revised the General Contractor's approval requirements to include the certification. DSHA reviews the certification during the construction process. Energy Star Builders are also acceptable, but may take additional requirements to be approved by the Energy Star entity. General contractors may have a main address in another state and may be listed under that state's Energy Star Partners.

LONG TERM AFFORDABILITY

- Maintaining the long-term low-income affordability warrants more points. We suggest that this rating factor be increased from 3 points to 15 points. Giving substantial points for conversion/long-term affordability would also contribute to the solution for preserving units beyond the compliance period.

DSHA RESPONSE: DSHA will take into consideration for the 2012 QAP after additional research and analysis is conducted.

CONSULTANT DEFINITION

- As a consultant that is part of the development team and that does stay involved with the development from application stage through to break-even of operations or later, we would like the opportunity to negotiate our own fee with the non-profits that we are assisting. We would be interested in learning DSHA's reasoning for insisting on a minimum of 25% of the Developer's fee for such a consultant in order for the project to receive points for the consultant's experience.
- We recommend that the State use flexibility with consultants as far as the services that are provided. Some consultants are only used during a certain portion of the development process.

DSHA RESPONSE: DSHA encourages the involvement of consultants that take active roles with LIHTC applicants. Only consultants that are a primary part of the Development Team should be listed as part of the Development Team and only those consultants shall be considered for points in the Development Team category. DSHA has added into the definition of Consultant - "...the Consultant must receive a minimum of 25% of Developer fee (except when DSHA may approve a lesser amount prior to application submission)" for those consultants that decide on a lesser fee. DSHA does recognize there are technical assistance consultant's that work with their non-profit clients and due to their capacity or for feasibility purposes take a lesser fee. A minimum of 25% Developer fee helps to demonstrate the commitment and involvement to the Development Team and project.

APPLICATION REDUNDANCY

- The application continues to ask for redundant information or information that is not necessary at the time of application.

DSHA RESPONSE: In 2012, DSHA will be launching a Web-based LIHTC application which is hoped will reduce redundancy and increase efficiency for Developers and DSHA staff.

- Unnecessary Exhibits in Application - We've concluded that there is no need in the application for Exhibits 41-62 until an applicant receives credits and proceeds with development.

DSHA RESPONSE: DSHA has noted that these exhibits in the QAP Attachments Checklist since 2001. All are denoted with an asterisk (*) that the documents can be omitted from the application, but are requirements and due after an allocation has been made. The exhibits are on the checklist to make the Applicant aware of their requirements after an allocation has been made. Applicants do not need to include as exhibits, but can mark on one page the Exhibits are N/A at application.

EQUITY RATE

- What is the equity rate for 2011?

DSHA RESPONSE: DSHA published the equity rate on Page 4 of the 11/15/10 in the DRAFT QAP Attachments as \$.72 cents net.

FINANCIAL FEASIBILITY

- The amount of RD mortgage you plan to assume may not be used to calculate leveraging points unless a commitment letter has been received from RD. This requires a transfer application to be submitted to RD but will require RD to fully process and approve the transfer which they cannot do without knowing that the project was awarded LIHTC's. That means that no RD transfer deals (you mention RD properties as a priority) will get funded because 5 to 10 points of their scores are attributed to leveraging. The proposed language removes the requirement that ALL funding sources must have been at least APPLIED for. This means that you are permitted to submit an LIHTC application which requires Rural Development approval of a mortgage transfer without actually applying to RD to transfer the mortgage. This means that though you can submit applications with public subsidies, they will never score very well. The requirement for a "commitment letter or contract" be removed entirely. If DSHA is willing to roll the dice on whether a project is going to get other financing, they should be willing to allocate the leveraging points that correspond to that financing.
- Funding agencies don't write letters saying they are interested in receiving a specific application and if they did it would be meaningless.

DSHA RESPONSE: In order to streamline the financial feasibility process and require less documentation, DSHA has revised the requirements for public and private financing unless the documentation will be used for the various point categories. We have clarified on page 36 existing federal financing/rental subsidy contracts for current Section 8 or USDA Rural Development projects do not need commitment letters or contracts in order to receive points in the leveraging category. Since the rental subsidy contract is in the name of the current owner of the project at LIHTC application and will remain until a transfer has occurred after tax credits are awarded, DSHA will continue to underwrite federal rental subsidies/financing and assume they will transfer with the new owner and utilize the rental subsidy as part of the calculation for the leveraging category.

DSHA has contacted our lending partners including Rural Development and commercial lenders to understand their lending requirements and how DSHA's LIHTC program could work better with their lending requirements. USDA Rural Development has indicated to DSHA that they would be willing to provide a letter of interest that they received a financing request for transfer application as well as new construction applications. Most commercial lenders and other funding institutions will provide these letters as well. Proof of application or letters of intent will also be acceptable. It is our understanding that most lenders, including USDA Rural Development do not provide approval, underwrite, or provide a commitment letter for projects until an LIHTC conditional award/reservation has been made.

- Broker Fees are not eligible? What is the reason for this since the fees are paid by the seller?

DSHA RESPONSE: Broker fees are eligible and typically paid by the seller. The total cost of the property, including broker fees, must be supported by the "as is" appraisal required by the first lender.

- The insistence on 20-year cashflows with 3 and 4% trending is not appropriate. This should be reduced to 15 years and based on 2 and 3% trending.

DSHA RESPONSE: A 20-year cash flow has been part of DSHA's standard underwriting as well as most permanent lenders since inception of DSHA's LIHTC program. The trending of 3 and 4% is standard practice for most HFA's and lenders and is a National Council of State Housing Agencies (NCSHA) recommended practice. DSHA has a database of operating income and expenses and reviews periodically for trend issues. For purposes of consistency, DSHA requires the use of 3% and 4% trending for all applicants.

- In the attachments to the Qualified Allocation Plan (page 6), the annual replacement reserve should be defined by the Capital Needs Assessment / Reserve Analysis report, and eligible to be lowered to \$300 per unit.

DSHA RESPONSE – DSHA follows the NCSHA industry standard recommendation for reserve requirements. In addition, DSHA keeps a database on all DSHA financed properties of operating expenses and can support the continuance of this underwriting criterion.

LOCAL CONTRIBUTIONS

- Page 41 has a typo in the section on local contributions.

DSHA RESPONSE: DSHA has corrected this page.

COMMUNITY OUTREACH

- To meet the Community Outreach requirements, why would a project have to be the only item on the agenda?

DSHA RESPONSE: The purpose of the Community Outreach ranking category is to have the Developer directly reach out to the community by having a meeting with the local civic or neighborhood organizations and residents of the community to specifically discuss the proposed project. At a municipal/town meeting, there may be many items on the agenda. Many of the participants at a municipal/town meeting may attend a meeting for different items on the agenda, there may be little of the community attending the meetings, or the opportunity to fully discuss the proposed project with the attendees of the meeting may not be possible due to time constraints.

LEVERAGING NON-DSHA RESOURCES

- The leveraging point categories don't make any sense. There should be fewer gaps and more categories.

DSHA RESPONSE: The Leveraging of Non-DSHA Resources Category was revised in 2007 to include a wider range of points for projects that receive only minimal non-DSHA funding. This category is one of DSHA's highest priorities as DSHA has limited funding.

- The severe equity shortage that currently plagues the LIHTC program nationwide is yet another challenge for affordable housing in general and for preservation in particular. ARRA also included a dramatic increase in Weatherization Assistance Program funding for residential energy efficiency improvements. We urge DSHA to contact Delaware Department of Natural Resources and Environmental Control and encourage them to target Weatherization Assistance Program funds for use in existing affordable housing pursuing LIHTC allocations.

DSHA RESPONSE: DSHA is also very interested in the opportunities that the weatherization program funding through ARRA may bring to multifamily developments. We are working with DNREC and other partners for information on the availability of Weatherization funds for LIHTC properties for 2011.

COST CERTIFICATION

- A \$5,000 fine for submitting the cost cert more than 90 days after C of O, Temporary C of O or substantial completion is excessive and unrealistic. What is the justification? This needs to be eliminated or clarified and changed to 150 days.

DSHA RESPONSE: Based on DSHA's experience of closing more than 75 LIHTC properties with HDF or HOME funding, 90 days after substantial completion or certificate of occupancy should be sufficient for the cost certification completion. By either date, 95% of all costs have been allocated and the accountant's certification for costs should not take longer than 90 days. Generally speaking, DSHA already has a 150 day time period, 90 days for the Developer to submit the cost certification and 60 days for DSHA to review the costs and perform an analysis. DSHA is required to use the cost certification for the final underwriting in order to issue the IRS form 8609. An increase in the time frame to complete the cost certification could negatively impact the project with higher costs (interest, etc) and delays in closing.

MINIMUM CONSTRUCTION STANDARDS

- Why is a specific carpet manufacturer required?
- The QAP actually contains a cut sheet for carpet manufactured by Mohawk Industries, Inc. The cut sheet is complete with Mohawk's logo. The State of Delaware cannot make private product endorsements.

DSHA RESPONSE: DSHA does not endorse any products. The carpet cut sheet attached to the minimum construction standards was only to be used for meeting minimum weight and grade and quality standards. Most properties funded with LIHTC do not use the product MOHAWK, but do use the weight, grade and quality standards for the carpet that is selected. The cut sheet will be removed and replaced with the same quality standards in the minimum construction standards.

NON-PROFIT POOL

- Can you please clarify how DSHA will assign development proposals within the respective pools, especially given that the proposed development could exhibit characteristics for multiple pools?

DSHA RESPONSE: All Non-Profit applicants compete in the Non-Profit pool first. The highest ranked Non-Profit applicant will win the pool. If the remaining Non-Profit applicants can meet the eligibility of any of the three remaining pools, their application will then compete in those respective pools. The Non-Profit pool applicant will receive the Non-Profit pool credits and if the applicant requires additional credits, they will take credits from the applicants' eligible pool (Preservation or New Creation).

NEW HOUSING CREATION

- We would like DSHA to consider reducing the elderly subsidy requirement to 25% of the units have subsidy for new housing creation.

DSHA RESPONSE: DSHA's most recent needs assessment does not indicate the need for additional elderly non-subsidized units and continues to show the need for additional or preservation of family developments. However, DSHA will consider for the 2012 QAP after additional research and analysis.

SUBSTANTIAL REHABILITATION

- On page 30 (Definitions – Substantial Rehabilitation), the minimum rehabilitation cost per unit should be reduced from \$30,000 of hard costs to \$15,000.

DSHA RESPONSE – DSHA follows NCSHA standard recommendation as well as utilizes DSHA internal database information on substantial rehabilitation costs in Delaware. Based on DSHA experience, the \$30,000 is a reasonable substantial rehabilitation cost per unit for Preservation/Rehabilitation projects in Delaware.

AMENITIES

- Business Centers - on page 49, under "Development and Units Amenities", language has been added that seems to recommend that a computer/business center be provided in community buildings. It looks as though DSHA is now requiring business centers to be mandatory. The QAP says "the community center should include a computer/business center". "Should" could be interpreted as a recommendation rather than a requirement. What if an existing community building is being renovated without adding any space? How is a business/computer center going to be added?

DSHA RESPONSE: DSHA clarified the community building definition as an amenity for the 2011 QAP. Most LIHTC applicants include a computer center or room with technology equipment in their community building for their residents as part of their application. DSHA therefore clarified that the community building should include computer/business center and will change the language to "shall". To receive points in the amenities categories, all amenities must be considered "new" to the proposed development.

ENVIRONMENTAL AUDIT AND ASSESSMENT

- An Environmental Site Assessment and Environmental Audit (rehab only) are being required. These reports add cost to submitting an application and are absolutely unnecessary at the application stage. The two reports combined add several thousand dollars in upfront costs and have almost no bearing on whether the tax credit application should be ranked or scored. There's plenty of time once an application has been selected to get environmental reports. Delete this requirement.

DSHA RESPONSE: An Environmental Site Assessment (for land/new housing creation) and an Environmental Audit (for rehabilitation projects) have been a requirement for DSHA's QAP since the inception of the program. Only one report is required depending on the type of application that is submitted. All lenders, including DSHA, must have some type of assurance the application/project does not have environmental issues at application. DSHA will continue to evaluate all application requirements and attachments for the 2012 QAP to determine if attachments are necessary before ranking.

10% TEST AND NEXT YEAR LIHTC APPLICATIONS

- On page 57, under "Placed-In Service Date", the first paragraph ends with bold type that reads: ...owners and/or any related entities, as determined by DSHA, that received a reservation and/or a Carryover Allocation of 2010 Credits and have not met the 10% test, as required by DSHA, by the 2011 Tax Credit application submission deadline are ineligible to make application for 2011 Tax Credits. This policy is burdensome on the development community because DSHA is very slow to process applications and work them through the process to closing. Delete this requirement.

DSHA RESPONSE: DSHA established this policy several years ago to encourage applicants that have received prior year allocations to reach closing before the applicant could apply for new credits. Allocations are preliminarily approved in June/July, carryover allocations must be signed by December each year and next year LIHTC applications are typically due end of March or early April. Projects should be able to close within the time period of preliminary approval and the next cycle so that the developer can make placed-in-service requirements in a reasonable time frame. Based on DSHA experience, the timeframe of this policy is reasonable and has been easily met by our applicants.

THE FREEDOM OF INFORMATION ACT (FOIA)

- The preliminary ranking automatically turns permanent three weeks after publication if DSHA doesn't revise it. Applicants only have appeal rights for 15 business days after the preliminary rankings are released. The Agency's published FOIA policy gives DSHA 30 days to provide access to documents. That means that if DSHA choose, it could withhold FOIA request documents until after the rankings become final.
- On page 54, DSHA has added an extra paragraph to their FOIA policy. This paragraph reads: Notwithstanding the foregoing, it is the policy of DSHA to not release to any third party any proprietary or commercially sensitive application materials or information until after the ranking of projects has been announced. DSHA expressly reserves its authority to withhold all such information from third party requests pending the completion of the ranking process, to the extent permitted by FOIA. This language makes no sense. The actual intent is to prevent anyone from requesting, under FOIA, any application materials prior to the finalization of rankings. I propose the following steps toward openness:

1. Each tax credit application, after having proprietary (financial statements) removed, should be scanned and provided to the public online.
 2. Allow all applicants the opportunity to review all other applications and publicly comment on substantial inconsistencies contained in those applications.
 3. Automatically provide each applicant the DSHA staff score sheet for their application, through formal communication, instead of making the applicant ask for it.
 4. On the preliminary and final rankings, provide the amount of LIHTC and all other State financing such as HDF, HOME and Preservation funds the applicant requested.
- We recommend that DSHA does not post other Developers Applications on line. It is our experience in several other states that do this, leads to endless litigation for the HFA and holds up the allocation process for months. We caution DSHA on what information from applicants is posted on the web.

DSHA RESPONSE: In order to ensure that a party wishing to appeal a ranking has adequate time to receive and review public records under FOIA, the revised draft QAP provides that DSHA will respond to FOIA requests for application materials or related information within seven business days of a request.

In order to protect the integrity of the QAP process, DSHA will not share application materials until after the ranking process is completed and has been announced. DSHA will accommodate FOIA requests in accordance with State and Federal FOIA requirements and expressly reserves its authority from releasing information that is exempt from disclosure such as trade secrets or commercial or financial information of a privileged or confidential nature. DSHA's legal counsel has reviewed DSHA's 2011 QAP and all attachments, including the FOIA section of the QAP, and the 2011 QAP comments and concerns submitted to DSHA. Based on legal counsel analysis, we have revised this section accordingly and it was determined, the Draft QAP complies and meets the requirement of the State and Federal FOIA requirements. DSHA continues to enhance what is published to our stakeholders. DSHA will add the amount of HDF requested to the application and award announcements.

DSHA DISCRETION

- Throughout the QAP, DSHA awards itself complete and total discretion to do as it pleases. When DSHA declares that it has sole discretion that means that rules laid out there only apply to the program participant, not to DSHA. In many places of the QAP, DSHA has reserved itself the right to do what it wants without regard to the document. DSHA should not be awarded absolute discretion.

DSHA RESPONSE: The purpose of a state's discretion in a QAP is not to bring subjectivity to the process, but bring flexibility throughout the QAP process while keeping the integrity of the LIHTC program and process intact.

The Internal Revenue Service requires all State agencies to develop and maintain a Qualified Allocation Plan (QAP) and allocate credits by way of the QAP. Congress and the IRS intend the LIHTC program to be overseen by the State Agencies and do not interpret QAP's and/or regulate State agencies. All HFA QAP's have discretionary language in their QAPs and we believe this language provides protection and due diligence as needed for its Development partners and for DSHA to oversee the LIHTC program.