

District of Columbia Housing Finance Agency



# Multifamily Underwriting and Program Guide

District of Columbia Housing Finance Agency  
815 Florida Avenue, NW  
Washington, D.C. 20001  
(202) 777-1600 | [www.dchfa.org](http://www.dchfa.org)

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## Introduction and Background

The mission of the District of Columbia Housing Finance Agency (“DCHFA” or “Agency”) is to stimulate and expand homeownership and rental housing opportunities in Washington, DC. We accomplish our mission by issuing tax exempt mortgage revenue bonds that both lower the cost of financing single-family housing and affordable rental housing and acquiring, rehabilitating and constructing rental housing. We embrace our responsibility with conviction and pledge our best efforts to serve as the District’s champion for homeownership and to act as the principal catalyst for neighborhood investment.

Our financing options for bonds include:

- Private Placement

In a private placement transaction the bonds are purchased directly by an institutional investor, at a rate negotiated by the purchaser, the developer and / or Agency. The bond purchaser acts as primary underwriter, with DCHFA conducting all normal underwriting procedures in conjunction with the purchaser.

- Fannie Mae / Freddie Mac Credit Enhancement

In a Fannie Mae or Freddie Mac credit enhanced transaction, a Fannie Mae or Freddie Mac DUS lender, normally the multifamily division of a bank, acts as the underwriter and Fannie Mae / Freddie Mac representative. The bonds are sold at a public offering with the backing of Fannie Mae or Freddie Mac credit enhancement. The credit enhancement or insurance (permanent and construction) allows the bonds to be rated and marketed to investors at the highest investment grades, and in turn, the bonds to be sold at investment-grade interest rates. All DCHFA underwriting and requisition rules apply on credit enhanced transactions, although the DUS lender often conducts much of the due diligence activity on behalf of DCHFA and the credit enhancer.

- FHA/HUD 221(d)(4) Credit Enhancement

A 221(d) (4) credit enhanced transaction is very similar to a Fannie Mae transaction, with the Federal Housing Administration (FHA) / the Department of Housing and Urban Development (HUD) filling the credit enhancement and oversight role.

- 542(c) HUD/HFA Risk-Sharing

In a risk sharing transaction, DCHFA conducts all underwriting, including mortgage credit option reviews and other HUD requirements.

Section 542 (c) enables HUD and state and local housing finance agencies (HFAs) to provide risk-sharing arrangements to help those agencies provide greater access to insurance and credit for multifamily loans. The program provides insurance authority independent of the National Housing Act and the program provides full FHA mortgage insurance to enhance HFA bonds to investment grade. Section 542 (c) provides credit enhancement for mortgages of multifamily housing projects whose loans are underwritten, processed, serviced, and disposed of by HFAs. HUD and the HFAs proportionately share in the risk. Under the risk sharing program, the DCHFA originates and underwrites multifamily housing loans funded by the proceeds of a bond sale. The loan proceeds may be used to refinance, newly construct, or substantially rehabilitate affordable multifamily rental housing units. The loan proceeds may also be used to finance the construction of affordable rental housing for the elderly. Eligible borrowers include investors, builders, developers, and public entities. Private nonprofit corporations or associations may also apply to a qualified HFA.

## **Application Guidelines**

All applicants should discuss their projects with DCHFA staff prior to submitting an application. The Agency has a four-stage application process, which may be shortened to three stages at the applicant's discretion. The stages are: (1) Letter of Interest; (2) Board Eligibility Resolution; (3) Conditional Underwriting Approval/Final Bond Resolution; and (4) Pre-Closing Documentation.

Stage 1 is simply a mechanism whereby developers may submit a conceptual outline of a proposed transaction and get feedback from the Agency in the form of a Letter of Interest. A developer may go directly to Stage 2 by submitting a complete Stage 2 application as described herein. Please refer to the Document Checklist for specific application requirements.

### **Stage 1: Letter of Interest**

A brief proposal with a general description of the site, the proposed ownership entity, developer/sponsor, and the proposed transaction is required. The proposal should include:

- A preliminary development budget showing estimated hard and soft costs, along with a discussion of proposed sources of funds.
- A preliminary operating pro forma with proposed rent levels, summary expense information, estimated net operating income, and other pertinent financial data.
- The applicant/sponsor should indicate how the proposed project will meet the Agency's minimum low-income targeting requirement (20 percent set-aside for families with incomes at or below 50 percent of the area median, or 40 percent set-aside for families with incomes

at or below 60 percent of the area median income), and include a discussion of preferred credit enhancement vehicles.

- The applicant/sponsor should indicate any unusual features of the proposed deal, which might become potential problems to be dealt with during the underwriting process.

## **Stage 2: Board Eligibility Resolution**

Applications must include an Executive Summary and Narrative, with the documentation specified on the Document Checklist, which is published on the DCHFA website on the MMRB webpage. The Document Checklist indicates the documentation required for a Stage 2 application. A detailed list of minimum items required to be submitted for each stage of the application is published on the DCHFA website. A non-refundable application fee of 0.1% of the requested bond amount must be tendered with the application submission and shall become non-refundable after the application passes the Selection Criteria. Applicants that have not tendered the required application fee with their submission will not be accepted for further evaluation and scoring.

The outline below provides the information regarding Stage II documentation. The following provides context regarding select submission documents; however, it is not comprehensive. The updated published application criteria on the DCHFA website published on the MMRB webpage should be relied upon.

**Application Form and Certifications** - The Application Form should be completed in its entirety. The certifications provided in the application must be signed by an authorized representative of the applicant.

**Executive Summary** - The Executive Summary should provide a summary description of the proposed project and its market position. This description should indicate whether you are requesting construction and/or permanent financing, whether a private placement or public offering is proposed, what subordinate financing is involved, what rent subsidies are to be used, and in which ward and census tract the project is to be located. Please discuss any unusual features of the transaction that have the potential to delay or force significant revisions to the development plan.

**Project Narrative** - The Narrative should discuss key elements of the development plan, as outlined below:

- Background and Experience of Developer/Sponsor and General Partners (a biographical sketch of key personnel of the developer/sponsor and general partner entities should be included).
- Financial Capacity of the Developer and General Partner
  - The most recent audited financial statements for all partners with an interest of 25% or more.

- A list of contingent liabilities such as guarantees of completion.
- Description of Ownership Entity
- Financial Feasibility/Credit Enhancement Information:
  - Describe acquisition-related costs, the scope and cost of rehabilitation, revenue and expense estimates, and the proposed debt structure.
  - Exhibits must include a Sources and Uses of Funds in the most current DC DHCD Form 202, an operating pro forma for the lease up period plus 15 years at stabilized occupancy, and prior-year project operating budgets or financial statements (if applicable).
  - Proposed form of credit enhancement
- Neighborhood and Site Information:
  - Describe the site and building type(s), all building addresses, project history, current and proposed zoning, and current and proposed unit types and amenities
  - Describe the neighborhood surrounding the site, and whether the project is subject to historic requirements or is in a flood hazard zone.
- Evidence of Site Control:

Exhibits must include evidence of site control (including evidence of the waiver, assignment, or expiration of tenants' rights in accordance with DC Law); a location map indicating other housing developments and key institutions within a one-mile radius (schools, hospitals, supermarkets, retail shopping, public transit stations, etc.); an existing and/or proposed site plan; unit floor plans (with unit sizes in square feet); and twelve color photographs of the site and building exteriors; neighboring/surrounding uses.

- Market Feasibility Information:
  - information on comparable projects in the target market including, but not limited to, other properties financed by DCHFA.
  - current occupancy levels at subject property
  - anticipated neighborhood/community impact
  - evidence of community support (tenant association, ANC, local community association)
  - exhibits must include a preliminary market and competitive analysis and a temporary relocation and anti-displacement plan

- Background Information on Proposed Management Agent:
  - previous experience managing similar projects
  - audited financial statements
  - proposed management agreement and plan
  - form of lease
- General Contractor Information
- Architectural and Engineering:
  - Describe the scope of work
  - Draft Architectural Rendering of Proposed Facade and Curb Appeal Features
- Appraisal Report
- Environmental Report:
  - Provide a Phase I Environmental Site Assessment (ESA)
- Project Development Schedule (MS Project schedule preferred showing interrelationships between major components and milestones)

Schedule may be preliminary. However it should show milestones relative to the major development components:

1. Site Control
  2. Master Development / Due Diligence
  3. Environmental Review and Remediation
  4. Design (Vertical and Horizontal)
  5. Government Entitlement and Building / Site Permits
  6. General Contracting Process
  7. Finance and Associated Legal and / or Legislative Processes for All Financing
  8. Anticipated Closing Date
  9. Construction Schedule
  10. Lease-up Schedule
  11. Cost Certification and Final Endorsement (if required)
- Participation by District Residents and Local Small Disadvantaged Business Enterprises or Minority-Owned Businesses
  - Miscellaneous Information

- If the project has existing HUD assistance, the most recent REAC inspection report should be included in the application. If in the most recent inspection the project received a failing grade, DCHFA may request the HUD Management Improvement Operating (MIO) Plan.
- Depending on the financing vehicles used (e.g. credit enhancement, subsidy) there may be related documentation required.

### **Stage 3: Conditional Underwriting Approval/Final Bond Resolution**

Prior to final Board action, applicants must submit all of the information and materials required for processing a Stage 3 Conditional Underwriting Approval (Stage 3). It is not necessary to repeat the information contained in the Stage 2 application. Rather, applicants may submit only a Document Checklist, with updated materials attached as exhibits. Applicant should be cognizant of the fact that, as described later in the Program Guide, some due diligence items (e.g., environmental report and appraisal / market study) have a limited shelf life. The Agency will provide the applicant with a listing of additional information and materials required prior to Stage 3 processing as well as any updates needed for 3<sup>rd</sup> party reports that the Agency considers out of date.

All key business terms must be negotiated and finalized prior to submission of a Stage 3 application. DCHFA staff will conduct the final underwriting analysis and work with all parties to draft the required bond documents. Bond documents must be in substantially final form before the Agency Board may approve a Final Bond Resolution.



# Section

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## Due Diligence/Third Party Investigations

### General Overview

This section contains instructions that describe processes, procedures and guidelines used by Agency staff and third party vendors who undertake the various studies, evaluations etc., that are required to fully underwrite complex multifamily housing transactions.

Borrower and sponsors should be aware that, for all HUD insured deals, the Agency staff will use specific credit underwriting criteria developed by the federal agency. Much of the required documentation can be found on HUD's website or the companion "HUD Clips" website. Some of the specific criteria for underwriting HUD insured transactions can be HUD handbook such as 4470.1 (Mortgage Credit Review), 4465.1 (Valuation) and 4460.1 (Architectural Review). This list is not meant to be exhaustive as HUD constantly evaluates and updates its criteria. Many updates come in the form of HUD Letters used to update users of HUD mortgage insurance programs.

For HUD insured projects, the selected third-party vendor must be familiar with and follow the guidelines of the HUD Multifamily Accelerated Processing guidelines or MAP guidelines. Use lenders for Freddie or Fannie or private placement.

### 2.1 Environmental Studies

All applicants for Agency financing must submit a Phase I Environmental Study Assessment (ESA) as part of an application for the Stage 2 / Initial Eligibility (inducement) submission. Additionally, the borrower shall submit an environmental remediation plan for any recognized environmental conditions identified in the Phase I or Phase II ESA. It is essential that the environmental review be completed prior to the drafting of final architectural documents and negotiation of the construction contract. Any adverse findings in the environmental report must be resolved, and any related work that has not been completed prior to the application for conditional underwriting approval must be included in the final scope of work. The developer shall identify in its remediation plan, the source of financing to complete the remediation. The cost of the remediation shall be listed in a separate and distinct budget line item, disaggregated from general construction or site work in the overall sources and uses.

Developers may contract with any licensed and certified environmental engineering firm, approved to do business with the DCHFA, to conduct Phase I or Phase II investigations. These investigations must be conducted in conformance with the American Society of Testing Materials (ASTM) Standards E1527-97 as amended. For a Phase I ESA to be considered, it should have been completed within 180 days of the date of submission of the Stage 2 application. If the borrower is updating an earlier report, the update must be no later than 150 days past the expiration of the original Phase I and within 60 days of the date of submission of the Stage 2 application. All such reports should be directed to DCHFA, or accompanied by a reliance letter from the environmental firm that conducted the assessment(s) in favor of DCHFA. As part of the environmental review, an environmental engineering firm must conduct an analysis to determine whether any of the following materials or conditions are present (or are likely to be present, above or underground) at the subject property:

- Lead-contaminated drinking water
- Lead-based paint
- Asbestos containing materials
- Radon gas levels
- PCBs
- Underground storage tanks
- Contaminated soil and/or ground water; etc.

The environmental engineer will also investigate the historical uses of the site in question, and determine whether any leaking underground storage tanks are located in adjacent or nearby sites. If the Phase I study indicates a high probability of contamination, a more thorough Phase II study will be required.

Projects that will be financed with HUD/FHA mortgage insurance, including risk sharing, are subject to additional environmental review requirements, as follows:

- **Environmental Reviews Under HUD Multifamily Accelerated Processing:** The HUD-approved mortgage lender must submit a Phase I ESA, along with a HUD "Environmental Data Sheet" (both prepared by a licensed environmental engineering firm), as part of the application for a Firm Commitment. HUD will complete the environmental review in accordance with the provisions of 24 CFR Part 50.
- **Environmental Reviews Under HUD/DCHFA Risk Sharing:** HUD delegates the environmental review to a "Responsible Entity" (a local government entity). The Responsible Entity must review all relevant information, including the Phase I ESA and the HUD Environmental Data Sheet, and complete an environmental review in accordance with 24 CFR Part 58. On completion of the review, the Agency must submit to HUD (as part of the request for HUD retained reviews) a form HUD-7015.15 "Request for Release of Funds," that has been executed by the Responsible Entity, along with a cover letter requesting a firm commitment. The cover letter must indicate that the

Agency will ensure compliance with all terms and conditions of the review, and notify the Responsible Entity of any material changes.

In addition, DCHFA has established the following standards for environmental remediation:

- Rehabilitation proposals must include remediation of all lead-paint containing surfaces in unit interiors, including both sides of the unit entry door and frame.
- Rehabilitation proposals must include removal of all asbestos pipe insulation and deteriorated (friable) asbestos tile in units, hallways, common areas and laundry rooms.
- Non-deteriorated (non-friable) asbestos tile, and asbestos pipe insulation in boiler rooms, may be maintained in accordance with an Operations and Maintenance Plan prepared by a licensed and certified environmental engineer.
- In general, unused underground storage tanks (USTs) should be removed. If the UST is proven to be void of any leaks by a record of periodic pressure tests, it may be filled and abandoned in place.
- Environmental remediation contracts must include a not-to-exceed price limit (i.e. guaranteed maximum price), for the specified scope of work.
- The proximity of the site to noise, traffic, electric generation or transmission facilities, or other industrial uses, will be a consideration in DCHFA review of environmental studies. These studies must be conducted by a third-party professional approved to do business with the Agency.
- All proposed remediation plans must be reviewed and approved by the District of Columbia Department of Health (DOH) prior to closing. Upon completion of the work, DOH must issue a closure or environmental clearance report indicating that it has inspected the completed work and renders that the work has been done in compliance with recognized standards of the environmental industry and meets the health and safety codes of the District of Columbia.

## 2.2 Market Study

DCHFA requires that an independent market analysis be conducted as part of the due diligence investigation. A market analysis is also required by IRS regulations for all projects utilizing low income housing tax credits (LIHTCs), HUD/FHA insured loans and HUD/DCHFA Risk Sharing deals. For HUD insured loans and HUD/DCHFA Risk Sharing deals, the vendor must be MAP certified. The Sponsor will bear the cost of the analysis.

The key concern of a market feasibility study for multifamily development is a project's ultimate acceptance and absorption by the market place. In analyzing market studies provided by third party vendors, DCHFA's staff will use the market study to evaluate the project and determine the following basic questions:

1. What is the current condition of the market?

2. How will the market respond to the proposed project?
3. How will the project perform under the general market conditions and against relevant competition?

**Site Evaluation** - Site evaluation is an important step in analyzing a loan application. Many of the reviews required to determine the feasibility of the development are contingent upon site characteristics, location and demographics of the surrounding community. Accordingly, a site visit must be scheduled early in the feasibility review process. Site visits should be arranged by the developer, at the request of DCHFA staff, and should include other members of the development team including architects, engineers and management agents. The factors listed below, will be evaluated on the site visit. Using these factors as a guideline, DCHFA will make a determination of the acceptability of the site for the proposed development.

- Accessibility of the site to schools, shopping, health, recreation and social facilities and employment opportunities. These criteria will be evaluated independently for each development based on the nature and proposed occupancy of the development, such as family, elderly or handicapped housing;
- Availability of public transportation to residents of the development;
- Availability or acceptability of sewer and water facilities, public utilities and other services such as rubbish removal;
- Preliminary assessment of potential environmental hazards;
- Compatibility of the proposed development within the neighborhood or community including the age of housing, neighborhood diversity, and incidence of crime;
- Type and costs of other housing in the development's market area; and
- For rehabilitation developments, the condition of the development and potential for rehabilitating the property at reasonable costs.
- The site must be properly zoned for the proposed use.
- The marketability of the development must be evaluated. This survey will also include a review of data relating to general improvements, developments planned for the market area and the projected time periods for these activities. The market study shall be dated no earlier than 180 days of submission of the application for final commitment.
- Proximity to and impact on other DCHFA financed properties.

**Market Study Requirements** - Applicants who are submitting materials for Stage 2 processing (eligibility/inducement resolution) must include a comprehensive market feasibility study and marketing plan. Applicants requesting a Letter of Interest only need to provide a brief description of the site and surrounding market area, with an indication of the proposed rent levels for the subject property. The minimum requirements for the market feasibility study and marketing plan are described below; however, applicants are advised that the requirements may vary depending on the type of financing, the source of credit enhancement, and/or the requirements of institutional bond investors participating in a negotiated private placement.

The market study should include each of the following components:

- Overview of the Washington, D.C. Economy and Housing Market. A general overview of the economic conditions in the metropolitan area in which the subject property is located. This overview should focus on trends in population, employment, housing construction, home values, rent levels, household incomes, and other economic indicators, and create a context for the analysis of the primary target market.
- Description of the Primary Target Market. The primary market area is the specific geographic area from which the subject property is expected to draw households. The primary market should be defined based on neighborhood boundaries and other natural or artificial barriers (i.e., rivers, highways, parks, etc.), as opposed to the circular area defined by selecting a particular radius (i.e., a 1-mile or 2-mile radius from the site). The analysis should include a detailed description of the target market, including major institutions, employment centers, transportation routes, and characteristics of the single-family and multifamily housing stock.
- Detailed Demographic Analysis of the Primary Target Market. The market study should include a detailed demographic analysis of the primary target market, including the number of households disaggregated by household size, income levels, racial and ethnic characteristics, and current housing conditions. To the maximum extent practicable, the study should identify the number of age- and income-eligible households residing within the primary market area, with additional details on those households in terms of family size and income levels. The demographic analysis should include an indication of the number of age and income-eligible households that live within the primary market area. The data used in the demographic analysis must be from the most recent decennial census or update issued by the United States Census Bureau.

In the case of projects seeking an allocation of low-income housing tax credits, it is important to calculate not just the number of households with incomes below the applicable income limit, but also the number of income-eligible households that have sufficient income to afford the proposed rent levels. Income-eligible households should be subdivided as follows: 1) households at or below 30% area median income (AMI); 2) households between 31 and 40% AMI; 3) households between 41 and 50% AMI; 4) households between 51 and 60% AMI; and 5) households between 61 and 80% AMI.

- Competitive Analysis. The market study should provide a detailed analysis of competing properties within the primary target market, including all tax-credit projects, projects targeting low-income renters, and lower-end market rate projects. Depending on the type of housing being proposed, it may be necessary to include a special focus on public housing, senior housing or other types of specialized housing located in the primary target market. The study should also provide an analysis of development trends in the target market, including information on projects currently under construction or scheduled to begin construction in the near future. For each project identified, the study should include information on current ownership and management, unit size and configuration, current rent levels, utilities, community or commercial space, resident services, parking, amenities, vacancy rates, and annual turnover rates. Rent levels should be adjusted to reflect

differences in unit size, utility costs and amenities relative to the subject property, before a direct comparison is made with the subject property.

- Recommendations. The market analyst's recommendations should bring together the demographic analysis (demand-side), and the competitive analysis (supply-side), to make a determination as to whether the target market has excess demand for the type of units to be offered in the subject property. If the market analyst concludes that there is a significant demand for the type of units being proposed, the study should include specific recommendations on overall project size, unit mix, unit size, rent levels and types of amenities.
- Projected Absorption Rate and Penetration Rate. The analysis should include a projection of how many units; by unit type (i.e., 1-br, 2-br, etc) will be leased for each month during the initial lease-up period. The projected monthly absorption for the subject property should be compared to the estimated monthly turnover for the entire primary target market, to arrive at a "penetration rate" (i.e., the percentage of households leasing apartments in the target market during a given period that must be captured by the subject property in order to achieve the lease-up projections). Special attention should be paid to the methodology used for estimating the annual turnover rate for comparable projects in the target market. The market analyst should determine, depending on the type of deal structure and credit enhancement, if the development's estimated penetration rate is sufficient to justify funding the development.

For particular financing programs such as the LIHTC program, HUD mortgage insurance programs, and Fannie Mae or Freddie Mac credit enhancement programs, the other parties involved in the financing may have additional requirements regarding the market feasibility study. Please refer to the fact sheets on specific financing options for more details on any special requirements that may apply.

The market study should include an analysis of at least three comparable projects (preferably five or more), which should all be within the primary target market. If comparables are used from outside of the primary target market, Agency staff will make an independent determination as to whether or not comparable projects exist within the primary market area. Agency staff will review market studies to verify that the rent levels indicated for comparable properties are adjusted to reflect differences in unit size and amenities, before being compared to the subject property. Pursuant to LIHTC and other affordable subsidy program standards, the Agency's underwriter must ensure that the borrower has considered utility allowances in its estimate of rents / gross income.

## 2.3 Appraisal

All applications for Conditional Underwriting Approval (Stage 3 processing) must include an appraisal dated within one year of the submission of the Stage 3 application date. The expense of the appraisal shall be paid by the sponsor. For all HUD insured deals, the firms must be a firm that is approved to do business with HUD. Notwithstanding the former, the appraiser must be licensed to do business in the District of Columbia, and must comply with all provisions of the Financial Institutions Reform and Recovery Act (FIRREA), and the Uniform Standards of Professional Appraisal Practice (USPAP/MAI).

In analyzing the appraisal report, the DCHFA underwriter should carefully consider all variables. The appraisal is designed to answer the question, "What will it be worth?" The appraisal is an estimate of the value of a property as of a certain date (e.g., "as-is", construction completion, stabilized occupancy). Appraisals must use the three standard methods of determining value (i.e., replacement cost, income approach and sales comparison approach). Most appraisals will determine a value of a property using all three approaches and then establish a value (the final reconciled value) by carefully considering the purposes of the appraisal and the limitations inherent in each of the approaches. (Note: In determining net income pursuant to the income approach, the proposed rents and operating expenses must be compared to current rents and operating expenses at other similar projects within the primary target market.)

**HUD/FHA Mortgage Insurance** - For applicants seeking HUD/FHA Mortgage Insurance as credit enhancement for the bond issue, there are several additional requirements concerning the appraisal. HUD's MAP processing guidelines contain the following provisions:

- A firm that is acceptable to the HUD Chesapeake Multifamily HUB Office in Baltimore must conduct the appraisal.
- Appraisers must comply with HUD's Conflict of Interest policies, and submit an "Identity of Interest and Disclosure Certification" along with their appraisal report. A copy of the form is provided in the attachment section of this manual.
- Appraisals must be prepared in accordance with the USPAP, and HUD appraisal standards per MAP guidelines, as amended.

**HUD/DCHFA Risk Sharing Program** - For applicants seeking mortgage insurance pursuant to the HUD/DCHFA Risk-Sharing program (Section 542(c)), all appraisal review functions will be performed by the Agency. The Agency shall assign an appraiser from the pre-approved slate of professionals and order the appraisal report. In all cases, the cost of the appraisal will be borne by the applicant. Under no circumstances can the appraiser be hired by the applicant; they must be hired by the Agency.

**Maximum Loan-to-Loan Value Ratios** - Minimum loan-to-value ratios vary by the type of financing and credit enhancement, as follows:

- |  |                          |
|--|--------------------------|
| ▪ HUD/FHA Mortgage Insurance:          | Per Program Requirements |
| ▪ HUD/DCHFA Risk-Sharing:              | Per Program Requirements |
| ▪ Fannie Mae DUS:                      | Per Program Requirements |
| ▪ Other Credit Enhancement Structures: | 85% LTV Max.             |
| ▪ Un-Rated, Unenhanced:                | 80% LTV Max.             |

In accordance with USPAP guidelines, the appraiser must take certain specific steps when appraising subsidized property. According to USPAP ... "research with housing organizations and public agencies should be completed to find appropriate data on financing, rental and occupancy restrictions, resale restrictions, and sales of comparably subsidized or restricted properties."



Knowledge of the general markets and the subsidized housing submarkets should be evident in all analyses. The analyses should also address the subject's ability to attract a sufficient number of subsidized tenants.”

Subsidies and incentives should be explained in the appraisal report, and their effect on value, if any, needs to be reported in conformity with Standard 2 of USPAP guidelines.

**Appraisal Requirements** – The following list details the minimum requirements for an acceptable appraisal (in addition to those listed above):

- Adequately describe the geographic area, neighborhood, rental competition, sales comparables, site, and improvements.
- Produce a fair market value supported by the reconciliation of the cost, income, and direct sales comparison approaches to value.
- Have an effective date within 120 days before the date the Stage 2 application is submitted to DCHFA (the appraisal must be dated within 1 year of submission of the Stage 3 application).
- Photos of the subject, comparable sales and comparable rentals.

## 2.4 Architectural and Engineering Cost Review

Borrowers are required to engage the services of licensed architectural and engineering professionals, pre-approved to do business with the Agency, for design and supervising services on all projects where any structural or civil engineering work is proposed (e.g. roofing, exterior walls, foundations, sanitary and storm sewer lines, etc.) or if there is major work proposed for the plumbing or electrical building systems. An Owner-Architect Agreement in the form AIA Document B181, *Standard Form of Agreement between Owner and Architect for Housing Services* (must be executed between the borrower and all prime professionals, including any site, civil, mechanical, electrical engineering service providers that may be required. The design professional's fee must be a fixed fee for the services as stated in the agreement and must be delineated for both design and construction supervisory (administration) services. The design professional must not have an identity of interest with the owner, developer or general contractor.

Applicants are also required to engage the services of a licensed and experienced general contractor. A standard AIA-form must be executed between the borrower and the general contractor. All contracts must include a schedule of values using the standard AIA trade divisions with the construction costs plus a percentage of replacement or repair indicated in a scope of work/description column. Construction contracts (all HUD related deals) are subject to "safe harbor" guidelines of 6%, 2% and 6%, for profit, overhead and general requirements respectively. General requirements in excess of 6 percent may be allowed for non HUD related smaller projects



on a case by case basis (e.g., projects with long construction schedules due to tenant-in-place rehab issues, or projects with multiple buildings and/or multiple sites).

The federally mandated Davis Bacon Wage Rate schedule must be applied to projects using Federal Financial Assistance such as HUD mortgage insurance or the Community Development Block Grant (CDBG) program. The applicant/developer is responsible for getting the wage determination from the issuing jurisdiction. Additionally, all project must comply with DC First Source Law.

A hard cost contingency will be required for all projects, but is not required to be included within the construction contract. The percentage of the contingency depends on job conditions, experience and financial ability of the guarantor, owner and contractor. In any case, the minimum requirement shall be five percent of the construction contract, including profit, overhead, and general requirements, depending on the type of construction (moderate rehab, substantial rehab or new construction).

**Architectural and Engineering Cost Review** - After the environmental, architectural, and engineering reports are completed, the developer/applicant will submit a Stage 3 application for final Board approval. The Stage 3 application must include the developer's final estimate and proposal with respect to the scope of rehabilitation or construction, and the overall construction costs. DCHFA staff and a third party reviewer will then undertake an Architectural and Engineering Cost Review (A/E Review) to ensure that the scope of work is adequate, the applicable building codes are applied and the construction costs are reasonable.

The following documentation should be supplied by the owner/developer, to the consultant. Delays in receipt of these documents in acceptable form will delay final completion and approval of the A /E Review:

- Unit Breakdown and Project Summary
- Design/Supervising Architect's Resume
- Architectural Service Contract for all members of Design Team including fees
- Architect's liability insurance
- Complete Set of Plans (level of plans must be indicated; pricing completed on drawings in the schematic design, design development or less than complete construction document level will need to be updated prior to closing)
- Complete Set of Specifications
- Architect's Certification of Compliance with Americans with Disabilities Act (ADA) and Fair Housing Accessibility Guidelines (FHAG)
- Architect's Certification of Compliance with Design Standards
- Construction Contract including Construction Budget
- Contractor's licenses
- Contractor's Construction Schedule
- All planning and zoning approvals

- Building permits and other government approvals (e.g., Office of Planning, Zoning, WASA, Department of Environment)
- Survey and Surveyor's Report
- Utility Companies agreements/confirmation of service availability

The third party A/E reviewer should review and assess the architect's qualifications and performance credibility by reviewing the architect's certification, resume, and insurance coverage including errors and omissions insurance. In addition, they must review and assess the project plans and specifications for compliance with:

- Local and nationally recognized building codes
- Applicable accessibility requirements, such as the FHAA (see Federal Register, Vol. 56, No. 44) and Part 504 of the Rehabilitation Act of 1973
- HUD Minimum Property Standards (see HUD handbook 4910.1)
- Historic Preservation Requirements, if applicable (see Section 106 of the National Historic Preservation Act) (Note: Consultation with the DC State Historic Preservation Officer is required for all developments located in historic districts and for projects involving structures 50 years of age and older, regardless of location)
- Design of comparable market rate housing

The final scope of work reviewed by the A/E reviewer must include critical repairs and replacements as indicated in the Agency-commissioned Physical Needs Assessment (PNA). Additional recommended repairs from the PNA are generally required, subject to approval by Agency staff.

The Agency reserves the right to require a more comprehensive scope of work to protect the interests of the residents or to enhance the long-term value and viability of the property. All Agency concerns regarding the scope of work, cost, or level of detail in construction contracts and related documentation must be resolved prior to Board consideration of a Final Bond Resolution.

Projects seeking HUD Risk Sharing or HUD-FHA mortgage insurance must undergo an independent third-party architectural and cost review pursuant to the Multifamily Accelerated Processing (MAP) Guide. This third-party review will be commissioned by DCHFA, at the applicant's expense, for HUD Risk-Share projects. For the FHA full-insurance program, the FHA Mortgage Lender also known as the MAP Lender) will commission the review.

## **2.5 Physical Needs Assessment**

Physical Needs Assessment (PNA)- The purpose of the Physical Needs Assessment is to determine the current property condition and assess the critical repair needs as well as the property improvements that will ensure a substantial useful life of the project. All rehabilitation project applications for Conditional Underwriting Approval (Stage 3 processing), must include a PNA from an approved list of third-party providers. The date of the PNA shall be within 180 days of the

submission of the Stage 3 application. For HUD Risk Share projects, DCHFA will hire all PNA providers.

Although not required, cost and timing efficiency is often achieved when both the PNA and the Architectural and Engineering Cost Review (as described in Section 1.5 above) are ordered simultaneously using the same provider. DCHFA requires that the cost of the PNA be borne by the borrower/developer. The third-party provider will require, at a minimum, the following documents from the sponsor / borrower:

- Unit Breakdown and Project Summary
- Environmental Site Assessment(s) including soil reports
- Other engineering and specialty report hazard, drainage, traffic control, etc.
- All planning and zoning approvals
- Survey and Surveyor's Report
- Utility Companies agreements/confirmation of service availability
- Original Building Blueprints or Previous Rehabilitation Plans and Specifications
- Proposed Rehabilitation Scope of Work

The PNA third-party contract should require a 30-45 day report delivery, unless all parties agree upon an extended period due to the availability of the document requirements listed above. There is a minimum 25 percent inspection of individual units, unless waived by DCHFA due to moderate unit rehabilitation. A higher percentage of unit inspections may be required by DCHFA. In addition, all of the common areas must be surveyed.

The final report should include two sections: 1) a physical inspection report and statement of critical and non-critical needs and 2) a replacement reserve escrow analysis. The first section should include a summary of the inspected and verifiable reported property conditions. Also, there must be a detailed cost estimate of the up front critical repairs and an estimate of other cost effective up front repairs required to ensure an as rehabbed useful life of at least 125 percent of the bond life.

The second section of the report should include a replacement reserve escrow analysis that shows an expected annual repair, replacement, and major maintenance cost schedule over the improvements expected life cycle but not less than the life of the mortgage. This analysis should provide a clear indication of the recommended per unit per annum (p.u.p.a.) contribution to the replacement reserve escrow account to cover the anticipated capital expenditures, assuming all critical and recommended replacements detailed in Section 1 are completed in year one (see section 3.12 for initial and annual replacement reserve requirements).

## **Financial Feasibility Requirements**

### **3.1 Developer Capacity**

DCHFAs will underwrite the sponsor on the merit of its development experience, creditworthiness and the experience and qualifications of the entire project development team. For risk sharing deals the Agency will use MAP Guidelines for mortgage. The developer must demonstrate prior development experience of comparable size and type developments. The experience must evidence the developer's capability to plan, construct, market and manage rental housing. Developers without prior experience, and non-profit developers, may be approved for loans if they can demonstrate capability based on other business endeavors, and credit and financial management history or if they team up with an experienced co-developer. Likewise, sponsors who can not demonstrate the financial capability to undertake the project alone will receive consideration if they are able to joint venture with a co-sponsor that meets the Agency's financial requirements.

DCHFA underwriting staff will evaluate the experience and financial capacity of the proposed developer, the proposed owner/borrower entity (including, as necessary, the general partner, its parent, its affiliates, its joint venture partners, and the proposed limited partners), the proposed general contractor, and the proposed management agent, and will establish a score based on the overall capacity of the entities identified for these critical roles in the development team. Developers/applicants will have the best chance to succeed if their management agent and general contractor are identified in advance, and their initial application includes detailed information on each member of the development team. Applicants that lack experience in a particularly important set of core capabilities are encouraged to find experienced partners to strengthen their application.

DCHFA will examine the following factors when evaluating the capabilities of the developer (and its project team) of a housing project to adequately develop and manage the project assets, so that the project will be able to pay its debt service in a timely manner.

#### **Commitment to the Housing Business**

- The long-term business plan and mission statement of the owner should be clear. The developer/sponsor entities should have a detailed business plan and a focused mission statement.
- Local presence in the real estate market. The entities should be able to demonstrate that it has strong knowledge of and experience in the local market or similar urban environments.

## **Demonstrated Experience in the Housing Business**

- Review of the number of currently owned units of housing.
- Years of experience of sponsor entity or related company / co-developer. DCHFA will review the experience level of the entity itself, parent or related entity or co-sponsor.

## **General Contactor's Qualifications**

- Experience in multifamily construction and in constructing the type of structure (garden, high-rise, etc.) contemplated in the application for financing.
- Bonding capacity should be (minimally) 100% of hard costs.
- If project contemplates use of federal insurance (FHA or Risk Sharing), contractor must be MAP compliant.

## **Asset Management Capabilities**

- Asset management systems in place. The highest-ranked entities will have, or hire a management agent that has property management and accounting software in place to record and prepare monthly asset management and/or property management reports; will have written asset management policy manuals, and have written procedures that govern site inspections. The frequency of the site inspections shall be governed by the project type.
- Board composition and participation. DCHFA will review board composition and participation to determine if the board has the experience and capability to effectively oversee the ownership and management of multifamily housing and is exercising its oversight role. Entities with sound management structures should have boards with members that have real estate development, construction finance, management or other similar backgrounds. At a minimum, the board shall meet quarterly to review operations.
- Depth and breadth of staff. The sponsor/owner's management entity will have adequate staff to perform required services, including dedicated asset management personnel, and an experienced controller familiar with the proposed financing structures accounting and reporting requirements and an experienced engineering staff. The entities will also have written, detailed organizational job descriptions and reporting requirements, and a written plan for transfer of responsibilities to succeeding staff members.

## **3.2 Site Control**

Acceptable site control includes ownership as evidenced by a deed to the property, a fully executed ground lease recorded in the land records of the District of Columbia, or a purchase and sale agreement that provides an exclusive option. In general, option agreements should have a minimum

remaining term of six (6) months from the date of application to provide adequate time for processing and closing a loan. Applicants are encouraged to pursue bridge financing in cases where short-term purchase options cannot be extended to allow adequate time for the Agency and other parties involved in the transaction, prescribed process for underwriting and closing transactions.

Applicants must provide evidence that the seller has posted and delivered notice of the proposed sale to all existing residents prior to Board consideration of an Eligibility Resolution. Prior to Board consideration of a Final Bond Resolution, applicants must provide sufficient evidence, as determined by the Agency, stating that all applicable tenant notification requirements have been met, and that the applicable time period for the tenant right of first refusal has expired or the tenants have waived such rights.

Applicants will be expected to provide title examination reports that detail all outstanding liens against the property. In general, the seller must use its own resources or the proceeds of the sale in order to clear prior liens. In all cases, DCHFA will not allow financing proceeds to be used to clear prior liens in cases where the previous owner is transferring the property subject to existing liens and is realizing net proceeds on the sale. In such cases, the applicant must use its own resources to clear all existing liens prior to closing the bond financing.

### **3.3 Mortgage Credit Review**

In analyzing the financial capacity of the Applicant, DCHFA will review the following information:

- Audited Financial Statements
- HUD 2530 Previous Participation Certificates
- Evidence of Ability to Secure Letters of Credit (with Amount Authorized)

The Sponsor's financial statements must demonstrate sufficient resources to pay the costs associated with the proposed project meet the equity requirements of the program and provide for unforeseen contingencies through the completion of the construction and during the planning and operation of the development. If guarantees are required, the financial statements must demonstrate that the sponsor has sufficient net worth to support the guarantees.

In evaluating an applicant's financial strength, DCHFA will review net worth and operating liquidity, as well as the overall debt-to-asset ratio for its housing portfolio, (based on mortgage principal balance outstanding less debt service reserve funds divided by current estimated value of real estate). Entities must have a total portfolio loan-to-value of 75% or less to achieve the highest score. Overall debt service coverage will also be examined (total portfolio net operating income, after an appropriate reserve for replacement allowance, divided by total annual debt service).

DCHFA mortgage credit reviews will cover the developer and any joint venture or co-sponsor entities, the guarantor, the proposed general contractor, and the proposed management agent. The Agency at its discretion may decide to perform a mortgage credit review of the Low Income Housing Tax Credit syndicator. Financial statements and background information will be required for each entity. Applicants must specify the entity or entities that will be providing financial

guarantees for the project, and provide three (3) years of audited financial statements for each such entity. DCHFA will accept guarantees for operating deficits, completion of construction, etc., provided that audited financial statements show adequate net assets and liquidity. Guarantees will not be accepted from entities that do not have independent audits of their financial statements, and projects proposed by such entities will need cash reserves and/or Letters of Credit to satisfy guarantee requirements.

Additional requirements for HUD/DCHFA Risk-Sharing deals include HUD Form 92013 and its supplement, which disclose all entities involved in the project, bank and credit references, and other pertinent data.

### **3.4 Acquisition Cost Limits**

DCHFA has established a policy that it will not finance transactions in which the acquisition cost exceeds the appraised "as-is" value, in order to avoid fueling an inflationary trend in the local housing market. The reasonableness of the acquisition cost will, in part, be based on the valuation as reported in the appraisal submitted by the appraiser.

### **3.5 Developer Fee Limits**

Developer fees are limited to a maximum of five percent of the acquisition cost plus fifteen percent of eligible development costs (excluding the acquisition fee). Eligible development costs for calculating the maximum fee on other construction costs do not include the following: hard or soft cost contingencies, syndication/bond-financing related costs; funded guarantee and reserve accounts that are required by lenders or investors; and developers' fees. If there is an identity of interest between the seller and the purchaser, no fee shall be calculated on the acquisition price. Total fees, including contractor overhead and profit, are capped at five percent of acquisition and eighteen percent total if there is an identity of interest between the developer and the construction contractor, whereby contractor profit and overhead is considered together with the developer fee subject to the overall cap of eighteen percent on development costs.

It is common for a portion of the allowable developer fee to be deferred and paid from available cash flow over time. For projects involving low-income housing tax credits, the deferred developer fee may be included in eligible basis. The amount of deferred fee is limited by tax credit investors to the amount that can be repaid over 10-12 years, which may be less than would otherwise be allowable by DCHFA guidelines. DCHFA will review projects to ensure that projects with deferred developer fees do not inhibit the developer's incentive to complete the project.

Consultant fees will be carefully scrutinized. Consultant contracts to companies that are directly or indirectly related to the sponsor should have documentation of the scope of work and service provided. In cases where there may be identity of interest issues, the consulting fees may be netted against development fees.

NOTE: DCHFA will not allocate tax credits on developer fees in excess of the above limits.

### 3.6 Credit Enhancement

DCHFAs has approved financing structures that involve a wide variety of credit enhancements; including HUD mortgage insurance, Fannie Mae and Freddie Mac Credit facilities, bank letters of credit, bond insurance, and cash. (The Agency does not provide any direct guarantee for the repayment of principal and interest on the bonds it issues, (i.e., DCHFAs does not issue "General Obligation" bonds, and is not authorized to pledge any local tax revenues or other local funds to secure its bonds). The Agency may also issue un-rated, unenhanced bonds which are privately placed.

### 3.7 Sources and Uses Statement

- Exhibits must include a Sources and Uses of Funds in the most current DC DHCD Form 202

### 3.8 Loan-to-Value Ratio Limits

- See Appraisal Requirements

### 3.9 Operating Pro forma

Owners/developers must provide an operating pro forma that projects revenues and expenses throughout the construction and operating phase of the development. Revenue projections must cite specific unit rent levels during the construction period and for the first full year of stabilized occupancy. Income and expenses shall be trended at 2% and 3% respectively. The revenue projections must be consistent with any proposed phase in of rent increases for current residents. The pro forma must model income and expense projections for a 15-year period.

Proposed operating expenses must be fully itemized, with separate line items for management fees, payroll and benefits, repairs and maintenance, property taxes, hazard insurance, and utilities. Proposed operating expenses will be compared against reported expenses for similar projects in the sub-market to ensure they are reasonable.

Operating pro formas should indicate the annual net operating income available for debt service, and calculate the annual debt service coverage ratio based on the estimated annual debt service expense (including annual issuer fees, trustee fees, credit enhancement fees, letter of credit fees, remarketing fees, servicing fees, mortgage insurance premium and rebate analyst fees, as applicable). The pro forma should contain notes indicating the all-in interest rate assumption used to calculate annual debt service, as well as the individual components of the all in rate. The following is given as an example of the all-in rate stack:

Base or Coupon Rate	4.75 per cent
DCHFAs Bond Admin Fee	40 bps
Mortgage Servicing Fee	25 bps
Trustee/Rebate/Dissemination Agent	05 bps
<u>Mortgage Insurance Premium</u>	<u>50 bps</u>
All-In Rate	5.95 per cent



As illustrated above, all annual fees must be included when calculating debt service coverage and annual debt service should be the actual debt service on the mortgage note, as opposed to an estimate of interest and depreciation.

For operating properties, the Agency will allow net income to be counted as a source of funding for projects with current occupancy of over 50 percent at the time construction begins. Existing occupancy will be discounted by 10 to 20 percent (based on the scope of rehabilitation) to allow for evictions and other move-outs during construction, and occupancy will be assumed to remain constant throughout the construction period.

### 3.10 Debt Service Coverage Requirements

Debt service coverage ratio (DSCR) requirements generally depend on the type of credit enhancement, or are established by the investor in the case of a private placement of un-rated, un-enhanced bonds. Standard Agency requirements are as follows:

- HUD/DCHFA Risk-Sharing: Per HUD Guidelines
- FHA Mortgage Insurance: Per HUD Guidelines
- Fannie Mae / Freddie Mac Credit Enhancement: Per Stated Guidelines
- Other Credit Enhancement (A or better, fixed rate): 1.15x
- Other Credit Enhancement (A or better, variable rate): 1.15x
- Un-Rated, Un-Enhanced: 1.15x

Annual contributions to the reserve for replacements must be included as an operating expense when calculating Net Operating Income (NOI), and the debt service estimate must include all credit enhancement costs, issuer fees, servicing fees, and trustee fees.



### 3.11 Reserve Requirements

Reserve requirements will vary by project size, market position, and type of credit enhancement. In general, the following types of reserves will be required:

- **Reserve for Replacements.** Disbursements from this fund will be for capital items only, as approved by the Agency, any subordinate lenders and loan servicer. Specific conditions will apply for item disbursements in excess of \$25,000 including competitive bidding, certificates of completion, etc. Guidelines for the minimum replacement reserve requirements for DCHFA financed projects are as follows:

Moderate Rehab: at least \$350 per unit / per year

New Construction: at least \$300 per unit/per year

Substantial Rehab: at least \$300 per unit/per year

The replacement reserve fund amounts for HUD insured deals shall be calculated based on the requirements of the specific HUD insurance program.

- **Capitalized Interest Reserve.** The capitalized interest reserve is an escrow account that funds interest payments during the construction period, when the project (if largely unoccupied) is not able to make payments from cash flow. The size of this reserve is based on the all-in mortgage costs (including bond debt service-interest only, DCHFA Issuer fees, Trustee fees, credit enhancement fees, etc.) for the estimated construction period. Standard FHA, Risk-Sharing, and GNMA securitization transactions usually add another one to two months to the construction schedule when calculating this funding requirement. In addition, rating agencies may require an initial deposit to the bond fund used to pay debt service on the bonds, to assure maintenance of a minimum balance in the debt service fund at all times prior to maturity.
- **Debt Service Reserve.** In the event of a monetary default by the borrower, the debt service reserve is a long-term reserve used to continue principal and interest payments to the bondholders. The reserve is generally sized at three to six months of debt service on the bonds, and is held by the Trustee for the life of the bond issue. The Debt Service Reserve requirement for all DCHFA Risk-Sharing transactions is six months; the semi-annual debt service on the bonds.
- **Operating and Lease-Up Reserve.** This reserve is a short-term reserve requirement intended to offset any operating deficits attributable to a slow or long lease-up period following construction completion and the exhaustion of the capitalized interest fund. This reserve should be calculated by using the estimated operating deficit based on expected revenue and expenses according to predicted absorption rates (generally based on the market study).  
  
Long-term operating reserves may also be required based on financial strength of the developer and primary guarantors and the general conditions in the market.
- **Section 8 Transition Reserve.** This is a specialized reserve that may be required by rating agencies and tax credit investors for transactions involving project-based Section 8 contracts. This reserve is intended to cover a transition period from Section 8 tenancy to non-subsidized tenants if Congress fails to appropriate funds for annual Section 8

contract renewals. The minimum funding requirement varies and the duration is usually the life of the mortgage.

### 3.12 Subordinate Debt

All secondary debt must be fully subordinate to the DCHFA first lien with no foreclosure or acceleration rights as long as the DCHFA debt is outstanding. For transactions with multiple classes of debt, foreclosure and acceleration rights will start with the DCHFA debt and move to the next lien holder in order of subordination after DCHFA debt has been fully repaid. DCHFA may consider the exclusion of subordinated debt from the maximum loan to value ratio (LTVR) guidelines in the case of non-amortizing or cash flow government-related subordinate debt or other eligible subordinate debt.

**Government-Related Subordinate Debt.** Debt from a governmental entity (city, state, or other municipal direct loans, i.e., Community Development Block Grant and Housing Production Trust Fund loans structured as subordinate debt, etc.) also known as “soft” debt. The following are examples of subordinate debt and how each type is treated:

- Debt that has no set repayment schedule and is paid out of excess cash flow after the project meets debt service coverage and is not secured by a mortgage lien may exceed the maximum limit of 100% LTVR. However, all other debt must total less than 100% and meet the other LTVR limits.
- Debt that has a set repayment schedule, is paid out of excess cash flow of funds, but has a mortgage lien, may exceed 100% LTVR. This is the case as long as the lender enters into a legally binding agreement with the trustee, the owner, and any other lender on the property that is satisfactory to DCHFA legal counsel waiving rights to acceleration and foreclosure.
- Government debt that has a mortgage lien, even if subordinated to the DCHFA debt, where the government lender does not waive acceleration and foreclosure rights as long as the senior debt is outstanding, will be treated by DCHFA as debt subject to the LTVR limits.
- Other eligible subordinate debt may be debt held by the developer pursuant to operating loans or other loans advanced to the borrower or debt held by a bank pursuant to a draw on a letter of credit related to construction financing for the transaction. This type of subordinate debt will usually need to meet several requirements including but not limited to the following:
  - The total debt per unit must be at or below the market rate as determined through a comparable sales and / or economic approach to valuation at underwriting. Repayment of this debt will only be from excess cash flow if available (or subject to a minimum DSCR if it is letter of credit related bank debt). In the case of the other subordinate debt, the maximum total LTVR, including this debt (but excluding government related debt) may not be greater than 100%. DCHFA will determine the minimum total debt service coverage, including debt service on other subordinate debt, on a project by project basis. The other subordinate debt shall not have acceleration or foreclosure rights as long as the DCHFA debt is outstanding.

The lender(s) shall enter into subordination or inter-creditor agreements with the trustee and other lenders whereby the lender agrees to subordinate any claims for unpaid debt service to the rights of the senior lenders, in order of lien, until such time as the DCHFA debt is extinguished.

For the purposes described herein, excess cash flow is defined as cash that is available free and clear of all must pay trust estates. While the DCHFA debt is outstanding, qualifying funds may be released from the trust estate after the receipt of audited financial statements and the project achieves its anticipated DSCR.

## **Architectural, Construction, and Related Documentation**

### **4.1 Architectural and Plans and Specifications**

As discussed in Section 2.4 (Architectural and Cost Reviews), applicants are required to retain an architect for design and supervision services. Stage 3 applications must include a copy of the standard AIA contract or required HUD form of contract with all attachments, as well as the final plans and specifications. Contracts should state the fees for design and supervision separately.

Agency staff will review the plans and specifications to ensure that the scope of work covers all critical and recommended repairs cited in the PNA. Specifications must have a sufficient level of detail to allow the Agency's construction monitors to determine that the proper materials and quantities are being installed. Specifications must include exact unit counts for bath and kitchen replacements, interior doors, windows, and fixtures. If an allowance is provided for replacements "as necessary", then the contractor must provide a unit count within the construction contract (i.e., the number of units that could be funded from the allowance, given the cost of the specified item). Architectural and engineering plans must be stamped and all required permits issued prior to closing.

### **4.2 General Construction Contract**

Applicants who are submitting an application for Stage 3 processing must include the resume and experience of General Contractor and a construction contract. Construction contracts must be submitted in standard AIA formats indicating either a lump-sum or cost-plus approach, and a guaranteed maximum price (GMP). Cost plus contracts must provide for an independent cost-certification of the contractor's actual costs, and provide a method for splitting any savings. All contracts must be accompanied by a letter from the General Contractor stating that the GMP will be firm provided the contract is executed within three (3) months of the date of the letter.

Construction contracts must breakout contractor profit, overhead and general requirements, and specify whether the payment and performance bond, builder's risk insurance, building permits, environmental remediation and a contingency are provided for within the GMP. Payment and performance bonds will be required for all projects. In some cases, however, the developer may be able to provide a letter-of-credit for 15% of the contract value in lieu of a bond. Builder's risk insurance must be obtained for the amount of the construction contract.

DCHFPA has adopted the guidelines of the National Council of State Housing Agencies (NCSHA), which provide a "safe harbor" for contractor profit, overhead and general requirements at 6%, 2%, and 6%, respectively. This may be modified for smaller projects as follows:

Construction Value	General Requirements (%)	Builder's Overhead (%)	Builder's Profit (%)
Up to \$2 Million	8	2	9
\$2 to \$4 Million	7	2	8
Over \$4 Million	6	2	6

Both the Borrower and the Contractor must certify that they will comply with all applicable provisions of the District of Columbia Human Rights Act with regard to a 35% LSDBE subcontracting goal and the targeting of 51% of new jobs to District residents. Pursuant to the Human Rights Act, borrowers and contractors must enter into a First Source hiring agreement with the District of Columbia Department of Employment Services prior to closing.

## Property Management

### 5.1 Management Agent

The management agent is an important member of the development team, and is a material factor in the scoring and ranking of applications during the eligibility stage. Any change in the management agent before or after closing will be subject to the Agency's prior written approval of the designated replacement. The Agency also reserves the right to require the borrower to change the management agent for a project, if there are uncured defaults with respect to provisions in the loan documents concerning property management and upkeep.

In order to complete its review of the proposed property management agent, DCHFA requires the following information:

- Two most recent annual financial statements (preferably audited),
- A description of the firm's capabilities and experience managing similar projects;
- A listing of the firm's current portfolio of properties under management and a five-year report of total units under management;
- Proposed management agreement;
- Proposed management plan;
- Proposed lease agreement;
- Documentation of bonding and insurance to provide a basic level of protection per DCHFA standards;
- Management plan including staffing levels, complaints procedures, and other standard management procedures including an operating and security plan for properties identified by the United States Attorney or the Washington Metropolitan Police Department as nuisance properties.

Agency staff will review these materials to ensure the proposed management agent has adequate experience, financial strength and liquidity, and that the management fee is reasonable. The management agreement and lease agreement must be reviewed for compliance with federal and local fair housing and landlord-tenant law. Management companies will agree to comply with federal and local fair housing and landlord-tenant laws in their management agreement. Sponsors/developers who will also manage the project must be able to demonstrate such capacity. Those applicants who are using HUD mortgage insurance or DCHFA/HUD risk-sharing financing will have to submit the following forms and information regarding the management agent:

- Form 2530 certifying previous participation by the management agent with HUD-related projects
- Form 9832- Management Entity Profile detailing key information about the management agent
- Form 9839 certifying that HUD regulations will be followed

## 5.2 Marketing, Tenant Selection, and Anti-Displacement Plans

Developers of multifamily rental housing that are applying to the Agency for tax-exempt bond financing must submit as part of their application a marketing and tenant selection plan that clearly demonstrates how the subject property will comply with Internal Revenue Service regulations establishing minimum set-aside requirements for units to be restricted for occupancy by low- and moderate-income households. The plan must also demonstrate that marketing and tenant selection policies will be in compliance with the Federal Fair Housing Act of 1968 as amended, Section 504 of the Rehabilitation Act of 1974, the Americans with Disabilities Act of 1992, and applicable laws and policies of the District of Columbia. In particular, the marketing and tenant selection plan must include the following key components:

- **Marketing:** The marketing plan must specify the number and type of units that will be set-aside for low-income occupancy, and the income limits (and rent limits, if applicable), that will apply to set-aside units. Set-aside units must be distributed proportionately by unit-type throughout the development, with no clear physical architectural distinction or differences between market rate units and affordable units. Applicants that propose a relatively low percentage of units to be set aside for lower income occupancy must indicate the extent to which additional units will be targeted to moderate income households.
- **Tenant Selection:** The tenant selection plan must describe the application intake method(s), the application screening process (i.e., employment/income verifications, credit checks, rental reference checks, criminal background checks, child predator checks, etc.), and the specific criteria to be used in determining whether applications will be accepted or denied (i.e., duration of employment, income requirements, number of satisfactory rental references, credit ratings, etc.). The plan should include a discussion of how waiting lists will be established and maintained, including a discussion of how the waiting list will be segmented to ensure that set aside units will be re-occupied by eligible households if and when they become vacant. In addition, the plan should specify the method for establishing priority among otherwise qualified applicants, including the method to be used for satisfying the requirement that "displaced households" referred by the Agency or the District of Columbia Department of Housing and Community Development be granted priority for any suitable set-aside units that may become available.
- **Affirmative Fair Housing Marketing Plan:** The applicant must provide an affirmative fair housing plan that includes the following: 1) the expected starting date for marketing activities; 2) the expected availability date for a model apartment; 3) anticipated office



hours for the marketing/management office; 4) the use of mass media and other moderate-income and minority applicants; 6) occupancy goals regarding low-income, moderate-income and minority households; 7) the marketing budget and staffing plan; and 8) plans for any marketing incentives, (i.e. a free month's rent, reduced security deposits, free or reduced-rate parking, etc.). This plan should be submitted on HUD Form 935.2. A narrative can also be included with the completed form.

- **Anti-Displacement Plan:** Properties that are partially or fully occupied at the time of acquisition must provide a detailed anti-displacement plan as part of the marketing and tenant selection plan. In general, if the proposed new rent levels will exceed 30 percent of the household income for an existing resident, then rent increases for such residents must be phased-in over time, with annual increases limited to no more than 10 percent. Existing projects with 100% project based Section 8 rental assistance are exempt from this requirement, as their contribution to the rental charge will remain the same. Developers will be expected to provide all residents with a right to re-enter the same or similar dwelling unit at the same address as the unit they vacated, without regard to their income. The only exceptions are for residents who were not listed on a valid lease agreement at the time of sale, and residents who have engaged in criminal activity as defined by HUD during the period of their residence at the property in question. Residents in good standing, who are involuntarily displaced by the increase in rents, or by the refusal of the new management to offer a new lease, may be subject to provisions of the Uniform Relocation Act. Rent increases must be approved by the Agency.
- **Supportive Services Plan:** Sponsors are encouraged to develop plans for supportive services for tenants. Supportive service plans should detail the type of services that will be provided, who (what agency, etc.) will be providing the services and how the services will be financed.

### 5.3 Temporary Relocation or Tenant-In-Place Rehabilitation Plan

If the applicant is proposing to acquire and rehabilitate a property that is currently occupied, the application must include a plan for tenant relocation or tenant-in-place rehabilitation that provides adequate protection for tenants. All costs associated with such plans should be included in the "Sources and Uses of Funds" statement as a separate line-item. Based on the specific condition of the subject property, the relocation or in-place rehab plan must include the following components:

- **Tenant Relocation.** When tenant relocation is necessary, the developer must submit a relocation plan that provides for all current residents of the project. The plan must be based on a tenant survey that lists the head of household, gross annual household income (with breakdown for each wage-earner), current monthly rent, household size and composition (age and sex), and number of bedrooms (current and future need), for each occupied unit. Residents must be pre-qualified to re-enter their unit before they are asked to sign income certification forms for low income housing tax credit compliance or to relocate.

The relocation plan must identify alternate housing that will be available to residents of the subject property on a temporary basis. In addition, the relocation plan should specify the types of relocation assistance to be made available, (i.e., moving services, moving expense reimbursement, storage services, temporary rental assistance payments, and other expense allowances), and the overall plan for administering the relocation process (including the plan for informing residents regarding their rights, benefits and projected moving schedules). The relocation plan must also include a detailed budget, and a statement that assures all relocation services will be provided without discrimination, in accordance with the District of Columbia Human Rights Act of 1977 (Title 6, Chapter 22 of the District of Columbia Code).

- **Tenant-In-Place Rehabilitation.** For this scenario, the plan must include a statement of feasibility (with concurrence by the project architect and general contractor), which indicates that the rehabilitation can be accomplished with reasonable protection for the health, safety, personal property and convenience of the residents during the length of the construction period. The plan must include a statement of any adverse impacts on residents, with identification of, and special consideration for, residents with known medical conditions. In addition, the plan must provide a detailed schedule for completing unit interiors, including the length of time each unit will be under construction, the time of day during which residents must vacate their units, and the dates and times when plumbing, gas and electric service will be disrupted. Finally, within the plan, the sponsor/developer should indicate how the various logistical elements of the plan will be communicated to the tenant community. Regular methods of communicating with the tenants should be set up to include a schedule of meetings. The level and complexity of the rehabilitation, the length of the construction period and the level (amount) of potential temporary tenant displacement are variables that will influence the meeting frequency. Meetings with the tenants to explain the process shall be held during preconstruction (prior to final bond approval) and during construction as dictated by the factors cited herein.

## Key IRS Policies Regarding Tax Exempt Bonds and Low-Income Housing Tax Credits

In order to meet IRS requirements governing the use of tax-exempt private activity bonds and low-income housing tax credits, the applicant must provide a marketing plan based on an irrevocable commitment to comply with one of two options for the set-aside of units for occupancy by low- and moderate-income households:

- at least 20 percent of the units will be set aside for households with incomes at or below 50 percent of the area median income;
- at least 40 percent of the units will be set aside for households with incomes at or below 60 percent of the area median income.

For existing nonprofit organizations issuing bonds pursuant to Section 145 of the IRS Code, there are no minimum low-income targeting requirements, provided that the borrower was issued a 501(c)(3) determination letter that recognizes housing as a mission-related activity. For newer and/or start-up nonprofit organizations, tax-exempt financing is available for housing that is provided exclusively for elderly, disabled, or low-income occupancy. Other types of housing sponsored by newer 501(c)(3) organizations are subject to IRS "safe harbor" guidelines which allow tax-exempt financing provided at least 75 percent of the units financed are occupied by households with incomes at or below 80 percent of the area median (along with additional targeting in accordance with the 20/50 or 40/60 options described above).

In general, not all project costs will be eligible for financing with tax exempt bond proceeds. Likewise, not all project costs will be considered eligible for purposes of calculating tax credit basis.

### **Costs Incurred More Than 60 Days Prior to Passage of a Board Eligibility Resolution:**

Pursuant to IRS regulations, only costs incurred within 60 days of passage of an eligibility resolution may be financed with tax exempt bond proceeds. Ineligible costs may be financed by other sources, or funded from the owner's equity contribution.

**Costs of Issuance in Excess of Two Percent of Bond Proceeds:** Pursuant to IRS regulations, costs of issuance in excess of two percent of the bond amount must be financed by other sources, or paid from the owner's equity contribution. In some cases, a series of taxable bonds may be issued in tandem with the tax-exempt bonds to cover excess costs of issuance and other "bad" costs (see below).

**Certain "Bad" Costs in Excess of Five Percent of Bond Proceeds:** IRS regulations also require that 95 percent of bond proceeds be used to finance "good" costs, which are limited to the cost of land and those items that are included in the depreciable basis of the project. Good costs are also limited to costs incurred within 60 days of the inducement of the project by the Agency's board of directors. All other costs are considered "bad" costs, and are subject to a cap of 5 percent of bond proceeds.

**Costs Incurred More Than 24 Months Prior to Closing:** IRS regulations governing the Low-Income Housing Tax Credit Program specifies that only costs incurred within 24 months of closing may be included in the eligible basis for the purpose of calculating the allocation of tax credits. If a proposed tax credit project involves significant acquisition costs that were incurred more than a year prior to the date of application for Agency financing, the applicant should consult with an experienced tax-credit attorney to determine whether any acquisition costs will be eligible for a tax credit allocation.

Also of note, there is a minimum rehabilitation requirement in order to use tax-exempt bond financing and LIHTCs for the acquisition of existing multifamily housing projects. Such projects must include rehabilitation expenses equal to at least 15 percent of the bond amount in order to qualify for tax-exempt financing. In addition, bond proceeds must be used to finance at least 50 percent of the total project cost in order to trigger the automatic allocation of 4 percent tax credits. Furthermore, if the bonds are to be insured by HUD under Section 221(d)(4) (i.e., if the project is to qualify as "substantial" rehabilitation), then the budget must include rehabilitation costs equal to or greater than 15 percent of the after-rehab replacement cost of the project.

## **Closing Procedures**

### **7.1 Final Board Approval**

Applicants must provide a completed Stage 3 application in order to commence final underwriting by Agency staff. Agency staff will work with applicants to finalize all business terms, and to develop and refine bond documents until they accurately reflect the agreed upon terms. When the bond documents are in substantially final form, the transaction will be scheduled for the Agency’s Board of Directors (the “Board”) for consideration of a final bond resolution / conditional approval. In addition to substantially final bond documents, the following conditions must be satisfied prior to final Board action:

- Unconditional financing commitments from all lenders and investors (including bond investors, credit enhancement providers, tax credit investors, subordinate lenders, and rent subsidy providers);
- DCRA approved Final Plans and Specifications; and building permits (vertical, horizontal, public space, WASA)
- A GMP construction contract, with written indication of how long the price will be held;
- An amended and restated Partnership Agreement; and
- A final Sources & Uses of Funds, Draw Schedule, and Operating pro forma and Project Schedule

In the case of public bond offerings, the Agency will not approve the printing and mailing of Official Statements until the DCHFA Board of Directors (the “Board”) has approved a final bond resolution.

## 7.2 Closing Requirements

Once a final bond resolution has been approved, Agency staff and bond counsel will begin collecting the final documentation required for closing the bonds and the mortgage loan. A partial list of key documents required prior to closing is as follows:

- Builder's Risk Insurance
- Payment and Performance Bonds
- Building Permits
- Property Hazard Insurance
- ALTA Survey and Surveyor's Certificate (special HUD requirements apply for HUD insured deals)
- Utility Availability Slips (WASA, PEPCO, WashGas, Comcast, Verizon, etc.)
- Title Insurance
- Fully-Executed First-Source Hiring Agreement with District of Columbia Department of Employment Services
- Certification of compliance with Tenant-Right-of-First-Refusal Laws from the District of Columbia Department of Consumer and Regulatory Affairs
- Bid Specifications for any proposed Guaranteed Investment Contract (GIC)
- Itemization of all Costs to be Paid at Closing (including borrower reimbursements)
- Final sources and uses and draw schedule

If all necessary documentation is not received five days prior to the scheduled dates for pre-closing and closing, the Agency may reschedule the closing for a later date.

DCHFPA requires that all funds required to complete construction of the project be unconditionally committed and structured to flow through the bond trustee. This policy is designed to ensure that such funds may only be requisitioned with the prior written approval of the Agency, in accordance with the project budget approved by all parties at closing and incorporated into the bond documents. Funds that are not earmarked for acquisition costs, closing costs, or construction and are due to be paid to the borrower after completion subject to certain conditions do not have to flow through the Bond Trustee. In general, all operating reserves and debt service reserves must be held pursuant to the terms of the loan documents.

## The Requisition Process

The DCHFA requisition process requires oversight by various Agency departments in order to ensure compliance with applicable laws / regulations and contract and loan documents.

After the scheduled field review by the DCHFA construction monitor, the developer shall submit two copies of each requisition / draw request to the Public Finance Department. Upon receipt, the requisition request shall be checked to ensure that all items are included in the requisition package. The draw requests shall contain both the application for payment for hard costs, as approved by the construction monitor in the field, and the soft cost request with adequate back up documentation and DCHFA approved budget status report. If any items are missing, the public finance staff person will contact the developer to obtain any missing components of the requisition. Once the package is determined to be complete, one copy of the requisition will be placed into circulation and routed to the various departments that need to approve the request.

As alluded to above, the DCHFA construction monitor will review hard cost budgets and change orders, and conduct site visits to ensure that reported information is correct. For federally insured deals, including HUD-DCHFA risk sharing, the construction monitor should conduct on-site interviews with laborers to ensure that contractors are paying laborers Davis-Bacon wages as determined by the wage determination for the project that is being reviewed. All site visits and interviews should be properly documented. Should major issues arise, the development officer from Public Finance and the director of the Compliance Department should be informed immediately.

DCHFA loan documents specify a ten (10) business day turnaround of the draw request once all of the proper documentation is received. The following is a list of departments, personnel and processes that comprise the requisition process:

### General

- The development officer assigned to the project shall be the principal contact between the Agency and the developer.
- A pre-construction meeting between the Agency and the developer shall be held after closing and prior to the commencement of construction between the Agency and the developer. The pre-construction meeting shall detail the requisition process.

- Timing: Once all of the proper documentation is received, each department shall have two (2) days to complete its responsibilities with respect to reviewing and or approving the requisition.

### The Process

- During the pre-scheduled hard cost draw request meeting with the developer and its general contractor, the construction monitor shall review the application for payment and ensure that work is being completed in accordance with the construction documents and that the amount of the payment request is justified by the work that has been completed. The construction monitor shall also ensure that the developer/general contractor is in compliance with Section 3, Davis Bacon and LSBDE requirements if applicable. The construction monitor shall document its findings in the appropriate format and submit with its field report.
- The developer shall make all of the changes to the application for payment requested by the construction monitor and submit two complete draw requests (hard costs and soft costs) to the public finance department.
- The public finance department staff shall review the package for completeness and check the requested amounts against available sources. If there is a budget imbalance or any other inconsistencies with the request, the appropriate Agency staff member shall contact the developer to request corrective action. Once all issues are resolved, the public finance department staff will process the draw.



## Sources and Uses of Funds

The Sources and Uses of Funds Statement (S&U) is an overall development budget for the project. Preliminary drafts of the sources and uses statement shall be submitted in the approved Agency format. The Sources and Uses statement will be used as part of the subsidy layering review, primarily to certify that estimated costs are reasonable when compared to similar projects. When developing a Sources and Uses statement, particular attention should be paid to the following issues:

- **Sources of Funds:** Sources of funds should indicate the requested bond amount, the amount of any secondary financing, the amount of any owner equity, and the projected amount of equity to be contributed by the tax credit investor (if applicable). If the project has received any short-term pre-development or construction financing that must be repaid at closing on the permanent financing, those loans should be shown as additional sources of funds along with a line-item indicating the amount that must be repaid at closing (a negative number that prevents “double-counting” when calculating the total sources of funds).
- **Uses - Acquisition Costs:** The cost of acquisition should be broken down to show the cost of the land separate from the cost of the buildings and improvements. In many cases, the most recent property tax assessment or appraisal is used as the basis for valuing the land. Closing costs associated with the acquisition should be itemized and shown separately. Any carrying costs (i.e., taxes, insurance and utilities), should also be shown separately. Certain closing costs may be included in determining the amount of tax credits allocated to a project, however, carrying costs are generally excluded, and land costs are always excluded.
- **Uses - Construction Costs:** Construction costs should be broken down to show general requirements and builders profit and overhead as separate line-items. The amount indicated on a guaranteed maximum price (GMP) construction contract is also acceptable, provided the contract shows the builder’s profit and overhead as a percentage of actual costs. The amount shown on preliminary statements must be adjusted over time until it can be replaced with the amount shown on a fully executed copy of the final construction contract.
- **Uses - Architectural and Engineering:** Architectural fees should be disaggregated to show the design and construction administration components separately. If the architect is not providing supervision (i.e., construction administration), then the cost of construction administration must be added as a separate line-item. This is not to be confused with the construction management functions performed by the Agency and other construction period lenders. If an applicant proposes to use bond proceeds to

finance construction, the Agency shall assign a construction monitor to the project. The Agency's current fee for construction monitoring is one (1) percent of hard costs. If any landscape architecture, structural or mechanical engineering services will be provided outside of the scope of the architect's contract, the related costs should be shown detailed separately.

- **Uses – Environmental Reviews:** A Phase I and if applicable, a Phase II environmental study is required for all Agency financed projects, and a HUD specific review, which can be found in the MAP guidelines, is required for all transactions involving HUD insurance. If an environmental review has already been completed and it indicates the need to abate hazardous materials, then the construction documents should clearly indicate that the required abatement has been included in the final scope of work.
- **Uses - Appraisal:** An appraisal is required for all Agency financed projects. Transactions involving HUD mortgage insurance must have an appraisal performed by a HUD approved appraiser. Applicants are strongly encouraged to contact the Agency to discuss the relevant requirements before ordering an appraisal.
- **Financing Fees:** The Agency's financing fees vary depending on the size of the transaction and the type of credit enhancement. The Agency fee schedule is listed in Attachment 1.
- **Legal Fees:** All tax-exempt bond financings must include an Agency legal fee and a Bond Counsel fee. In addition, there may be a need to earmark funding for the owner's legal counsel and legal counsel for the tax-credit investor (if any). Other lenders, bond underwriters and credit enhancement providers may also require that their legal fees be paid from proceeds available at closing on the bond issue.
- **Costs of Issuance and Other Closing Costs:** Applicants should attempt to fully itemize anticipated costs of issuance and other closing costs. Costs of issuance and other closing costs typically range from 5 to 10 percent of the bond amount, depending on the size of the transaction.