

New York State Homes & Community Renewal

New York State Low Income Housing Tax Credit Program

SLIHC Transfer Information

The New York State Low Income Housing Tax Credit Program (“SLIHC”), as authorized by Article 2-A of Public Housing Law (“Statute”), was amended in 2018 to allow for the transfer of SLIHC without regard to any federal Low-Income Housing Tax Credit (“LIHTC”) allocated to the owner of the same eligible low-income building(s). This authorization is intended to broaden the potential investor pool, increase demand for SLIHC, and thereby leverage substantially increased SLIHC investor equity financing and the aggregate amount of SLIHC equity invested in the development and preservation of affordable housing.

New York State Homes and Community Renewal (“HCR”) retains the discretionary authority to approve the use of SLIHC transfer based on its documented financial benefit to the specific project and its eligible low-income building(s).

Bifurcation

Bifurcation refers to the allowance in which HCR’s allocation of SLIHC to a project may be provided to a taxpayer separate from the entity receiving the LIHTC allocation for an eligible project. Prior to enactment of this statutory provision, the LIHTC and SLIHC taxpayer were required to be the same entity, regardless of the extent of the taxpayer’s (and its investor’s) New York State tax liability. Bifurcation, as authorized by HCR, is utilized in conjunction with SLIHC Transfer, as further explained below.

Transfer

Under the SLIHC transfer provisions of the Statute, the owner entity is allowed a single “transfer” of the SLIHC allocation under the Statute, in whole or part, to another entity (referred to in Statute as a “Transferee”) which has no ownership interest in the LIHTC/SLIHC-financed affordable housing project.

Transferees are entitled to apply the transferred SLIHC against a tax imposed under Article 9-A, 22, or 33 of New York State Tax Law. The Statute prohibits Transferees from any further transfer of SLIHC acquired by transfer; therefore, only one transfer of the SLIHC allocation is allowable.

To transfer SLIHC, a taxpayer allowed SLIHC must enter into a SLIHC Transfer Statement (also referred to as a “SLIHC Transfer and Approval Statement”) and a SLIHC Transfer Contract with a Transferee (“Transfer Contract” or “SLIHC Purchase and Sale Agreement”) that specifies, at a minimum (each being a “Transfer Contract Requirement”), the following:

- (i) the building identification numbers for all buildings in the project (required prior to issuance of the DTF-625 SLIHC final credit allocation document (“DTF-625”));
- (ii) the date each building was placed in service (required prior to issuance of the DTF-625);
- (iii) the fifteen-year credit compliance period for the project;
- (iv) the schedule of years for which the transferred SLIHC may be claimed and any amount that may have previously been claimed;
- (v) the amount of consideration received by the Taxpayer, if any, for the transferred SLIHC;
- (vi) the amount of SLIHC being transferred;
- (vii) that the taxpayer transferring the SLIHC remains solely liable for all obligations and liabilities imposed on the Taxpayer with respect to the SLIHC, none of which shall apply to the Transferee; and,
- (viii) the name of the guarantor who will remain liable for ensuring that all SLIHC obligations (the “Obligations”) to the State of New York are met. If such guarantor is different than the Taxpayer, such guarantor shall be a party to the Transfer Contract and, if the taxpayer directs the SLIHC award or allocation to a Qualified Non-Profit Organization (“QNPO”), the QNPO shall also be a party to the Transfer Contract.

HCR shall have the ability to enforce any Obligations and will require that a guarantor enter into a SLIHC Guaranty Agreement for the State of New York’s benefit and demonstrate sufficient assets to cover any liabilities on the part of the taxpayer, as determined by HCR, should those Obligations not be met.

Timing, Process and Requirements

- 9% LIHTC Financed Projects:
 - Project applicants must identify the proposed use of SLIHC transfer at the time of application, unless otherwise authorized by HCR.
 - Project applicants must provide evidence in the initial funding application that the project intends to utilize SLIHC transfer as set forth in the Letter of Interest/Intent provided by the tax credit investor to provide equity financing to the Project.
 - Project sponsors that have been awarded or otherwise received an HCR reservation of SLIHC that seek to utilize transfer must submit to HCR a draft Transfer Statement, Transfer Contract and other draft transfer documents cited below for review at least 60 days prior to the anticipated construction financing closing date. A final Transfer Statement, Transfer Contract and other final transfer documents must be submitted to HCR no later than seven days prior to the anticipated construction financing closing.

- 4% LIHTC/Tax-Exempt Bond Financed Projects:
 - Project applicants must identify the proposed use of SLIHC transfer at the time of application, unless otherwise authorized by HCR.
 - Project applicants must provide evidence that the project intends to utilize SLIHC transfer in the prospective credit investor's Letter of Interest/Intent to provide equity financing to the Project.
 - Project sponsors that have been awarded or otherwise received an HCR commitment of SLIHC that seek to utilize transfer must submit to HCR a draft Transfer Statement, Transfer Contract and other draft transfer documents cited below for review at least 45 days prior to the anticipated construction financing closing date. A final Transfer Statement, Transfer Contract and other final transfer documents must be submitted to HCR no later than seven days prior to the anticipated closing.

Pursuant to the timeframes specified above, as further set forth in any reservation or commitment letter, the following SLIHC transfer documents must be submitted to HCR as part of the SLIHC Transfer process prior to construction closing:

- (i) SLIHC Transfer and Approval Statement;
- (ii) SLIHC Transfer Contract (i.e., SLIHC Purchase and Sale Agreement);
- (iii) SLIHC Guaranty Agreement;
- (iv) Proposed SLIHC Guarantor's most recent audited financial statement (including a signed certification indicating the audited financial statement's representations of the Guarantor's assets and liquidity are accurate and provide for sufficient assets to cover any liabilities on the part of the Taxpayer, as determined by HCR, should those Obligations not be met.);
- (v) SLIHC Transfer loan documents; and,
- (vi) SLIHC Transfer organizational chart (indicating transferor and transferee entities) and related organizational documents.

HCR provides templates for use for the SLIHC Transfer and Approval Statement, the SLIHC Purchase and Sale Agreement, and the SLIHC Guaranty Agreement, available at:

<https://hcr.ny.gov/slihc-transferability-information>. Use of these templates will facilitate review of such documents.

HCR, in its discretion, may request additional documentation necessary to review and approve the project-specific SLIHC transfer transaction.

Additional Considerations for SLIHC Transfer

Pursuant to the Statute, and as noted above, no transfer of SLIHC will be effective unless the Transferor and Transferee allowed the SLIHC allocation files a SLIHC Transfer and Approval Statement, a Transfer Contract and other documentation with HCR and obtains HCR's documented approval.

Entities that have been awarded or have otherwise received a reservation or commitment of SLIHC that have been authorized to utilize transfer prior to construction financing closing must submit a draft Transfer Statement and Transfer Contract to HCR for its review, pursuant to the timeframes set forth above for 4% and 9% projects, prior to the anticipated construction financing closing date and a final Statement and Contract no less than seven days prior to the anticipated closing. The Transfer Statement and Transfer Contract between transferor and transferee (and the guarantor and Qualified Non-Profit Organization) will be executed at or prior to the construction financing closing but may be subject to amendment with the consent of HCR as further described in the following paragraph.

Notwithstanding the above, the SLIHC transfer transaction will only become effective at the point in project development that HCR issues the final SLIHC allocation and certification (i.e., the DTF-625) subsequent to the project being placed in service and permanent conversion. The SLIHC transfer will be subject to the same terms and conditions as HCR's issuance of the DTF-625. Subject to the consent of HCR, the Transfer and Approval Statement and Transfer Contract may be updated and amended prior to the issuance of the DTF-625 to acknowledge and document the replacement of the Transferee previously designated at construction financing closing. However, any such assignment of the SLIHC Transferee must be approved by HCR and finalized no later than the date of issuance of the DTF-625.

In conjunction with issuance of the DTF-625, and pursuant to Statute, the final transfer approval package is submitted by HCR to the NYS Department of Taxation and Finance, pursuant to Statute.

Participation of Qualified Non-Profit Organization

At the discretion of the project owner, to further increase the amount of equity generated by the SLIHC, and directed to the project, beyond what would normally be achievable under transfer, entities that have been awarded or otherwise received a reservation or commitment of SLIHC may, upon approval by HCR, direct such SLIHC to the ultimate Transferee, through a Qualified Non-Profit Organization (QNPO).

The QNPO may be a passthrough entity to sell the benefit of the SLIHC to a Transferee, provided that all the proceeds from the sale of the SLIHC, less a reasonable administrative fee as determined by HCR, if any, are used as a financing source for the eligible low-income project on such terms and in such an amount as acceptable to HCR. To utilize this transactional model, the QNPO must have as one of its tax-exempt purposes the fostering of low-income housing. QNPOs must be in good standing with all governmental agencies to act in this capacity.

When SLIHC is directed through a QNPO under the conditions and requirements described in the foregoing paragraphs, the Transfer Contract and Transfer Statement must additionally specify:

- (i) the name and principals (board president/chairperson and chief executive officer) of the QNPO to which the SLIHC has been directed to by the owner;
- (ii) the amount of SLIHC being sold by the QNPO, on behalf of the owner, to the

- Transferee;
- (iii) the amount, timing, and any other terms and conditions of the consideration to be received by the QNPO from the sale of the SLIHC to the Transferee;
- (iv) the amount of any administrative fee charged by the QNPO, if any, as approved by HCR; and,
- (v) the terms and conditions under which the proceeds from the sale of the SLIHC will be loaned and/or contributed by the QNPO to meet the financing needs of the eligible project, including the timing of such payments. Additionally, the QNPO shall be a party to the Transfer Contract and the Transfer and Sale Agreement.

Technical Assistance

Applicants, project sponsors, syndicators and/or investors contemplating the use of SLIHC Transfer are advised to schedule a technical assistance session with the pertinent HCR Development Director to discuss the use of this financing tool.