



DOMINIUMSM

October 15, 2021

Kim Wilbourne
LIHTC Manager
South Carolina State Housing Finance & Development Authority
300-C Outlet Pointe Boulevard
Columbia, SC 29210

Via Email Submission

Dear Ms. Wilbourne,

On behalf of Dominium, thank you for the opportunity to provide comments on the South Carolina State Housing Finance and Development Authority 2022 Draft Qualified Allocation Plan. To inform our comments, Dominium solicited feedback from our financial, legal, and development partners throughout the industry.

With almost 50 years of experience helping communities achieve successful affordable housing solutions, Dominium's overriding objective is to build and improve properties that people are proud to call home.

As there are many significant changes in the proposed draft QAP, for which there may be unknown results and unintended consequences, Dominium encourages SC Housing to implement a transparent and robust tracking and evaluation mechanism to help guide adjustments as needed, specifically for

- the utility allowance schedule,
- operating reserve requirements,
- replacement reserve requirements,
- cash flow loans, and
- developer fee caps.

Utility Allowance Schedule

Section V(A)(6) provides four methods for calculating the utility allowance schedule. While each of these methods are useful, Dominium encourages SC Housing to provide flexibility for developments to utilize the optimal utility allowance for each development and to encourage utility allowances that accurately reflect anticipated utility consumption, in accordance with *NCSHA Recommended Practices in Housing Credit Administration*. NCSHA encourages agencies to

- Permit Housing Credit developments to select from all utility allowance options available under IRS regulation; and
- Specify requirements for application of alternative utility allowances (i.e., Agency estimate, utility company estimate, HUD Utility Schedule Model, or energy consumption model) in both new developments and existing developments that seek a change in utility allowance.



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In the past decade, periodic spikes in residential utility costs have resulted in operating cost increases in many Housing Credit developments. During this time, technology and federal policies relating to utility allowances have evolved rapidly. Dominium has responded by adopting alternative utility allowance methodologies that more accurately reflect utility costs and that acknowledge significant advances in energy efficiency in the Housing Credit communities.

To this end, **Dominium encourages SC Housing to adopt utility allowance schedule language like that found in the including the Arizona Department of Housing's 2021 Qualified Allocation Plan.**

Section 2.9(M) of 2021 ADOH QAP

"Utility allowances shall be based on the energy consumption model (Treas. Reg. § 1.42-10(b)(4)(ii)(E)) and must be prepared by a qualified professional as described in this paragraph. For purposes of this Section, a qualified professional is a Certified RESNET Home Energy Rater who is in good standing with the Residential Energy Services Network ("RESNET"). Furthermore, the qualified professional must not be related to the building owner, Property Manager or any other entities owned or controlled by these parties within the meaning of I.R.C. § 267(b) or § 707(b)."

"a Certified RESNET Home Energy Rater shall perform an energy analysis for the property following the RESNET Home Energy Rating System Standards. The analysis shall establish an estimated utility allowance for each unit type based on the implementation of all ADOH approved design requirements. At Project final, and completion of all necessary verification testing and inspections, a RESNET "confirmed rating" or "sample rating" shall be issued for the Project."

"the Owner must submit to ADOH documentation that the "confirmed" or "sampled" rating is completed and include a report of the utility allowance estimates for each unit type. Once approved, the estimated utility allowances are to be utilized for the first year of building operation and rent calculations."

"at the conclusion of the first year of operation utilizing the utility allowance estimates, the qualified professional shall obtain from the appropriate utility companies actual utility bills for the previous twelve (12) months of building operation. The professional shall calculate the average actual utility bill allowance for each unit type for the property. The Owner must submit to ADOH a report of the average actual utility allowance for each unit type. Once approved, the new utility allowances are to be utilized for building operation and rent calculations for the property and must be updated and submitted annually to ADOH using the same process outlined in this paragraph."

Operating Reserves

Section V(S)(3)(a) requires developments to maintain a minimum of six months of operating reserves. **Dominium requests that SC Housing allow projects financed with private activity bonds and 4% LIHTC to request a waiver to establish a 4-month operating reserve in lieu of a 6-month requirement.**

Such a waiver would free up unused capital to allow for SC Housing and developers to pursue more projects, align with investor requests for these projects, and allow well-capitalized developers to fund other outside operational costs and shortfalls. In pursuing this waiver, SC Housing could require Dominium and other developers to provide an analysis of trends on new construction and rehabilitation



projects to exemplify the trends of reserve balances for their projects and/or provide a Reserve Letter of Credit for a minimum annual term of twelve (12) months, with annual renewals through the expiration of the project's extended use period.

Replacement Reserves

Section V(S)(3)(b) requires developments to maintain a minimum \$300 per unit annually in replacement reserves. While adequately funded replacement reserves are essential to a rent development's long-term financial and physical viability, senior projects generally require fewer capital improvements over the term of ownership than a family deal, and also have less resident turnover.

In line with *NCSHA Recommended Practices in Housing Credit Administration*, **Dominium asks SC Housing to establish replacement reserves of \$250 per unit per year for new construction developments for seniors and \$300 per unit per year for new construction developments for families and developments involving rehabilitation.** Should such a policy be adopted, exceptions for certain developments intended for special needs populations that may suffer less wear and tear than other properties, and for rehabilitation developments in which a current capital needs assessment supports some other reserve level, would also be encouraged.

Permanent Financing (Pg. 22)

Section V(S)(11)(c) states that all cash flow loans, and related party loans will be considered additional deferred developer fee and included for purposes of the 50% deferral limit.

Dominium's ability to incorporate a seller note and related party loans into the capital stack is a beneficial tool for the project to generate additional federal tax credit equity to help facilitate the acquisition and rehabilitation of an existing development. With non-competitive developments financed with 4% LIHTC, a seller note enables developments to be more financially feasible when competing with market rate buyers who do not have the intention of rehabilitation and maintain the affordability of the development.

For this reason, **Dominium urges SC Housing to state that cash flow loans and related party loans should not be considered deferred developer fee and should be referenced as additional leverage for the development.**

Developer Fee

Sections V(S)(4-5) establish the maximum developer fee and the maximum portion that may be deferred. Among the states with the closest comparison to SC Housing's limit is Minnesota, whose underwriting guidelines support a 15% maximum developer fee for the first fifty units and an 8% developer fee for units fifty-one and over. This scheme has provided Dominium developments in Minnesota between \$7000-\$8000 more in per unit developer fees.

The next closest state, Texas, states that the developer fee included in eligible basis cannot exceed 15% of the project's eligible costs, less developer fee, for developments proposing fifty units or more. In Texas, Dominium can expect between \$8000-\$14000 more in per unit developer fees.



The greatest contrast exists in Tennessee where developer fees cannot exceed 25% of eligible basis, before the addition of the fee, and developer fees over 15% of eligible basis must be reflected as deferred fees and included in the sources of permanent financing.

The difference in developer fees between the aforementioned states and SC Housing is most notable because, as a long-term owner and manager of affordable housing, Dominium generally defers a portion of the developer fee to assist in operations of its communities. Maximizing developer fees, within reason and the constraints of the law and regulation, is a proven and successful method of increasing eligible basis, raising additional equity, and generating more production through the 4% LIHTC. In effect, progressive policy approaches to structuring developer fee can serve as an alternative to gap financing in a project and allow SC Housing to prioritize soft dollars for other needs.

For these reasons, **Dominium encourages SC Housing to consider differentiating developer fee maximums between the 9% and 4% LIHTC programs.** While volume cap is a limited resource, the credits associated with 4% transactions are only limited by the amount of eligible basis. This is a significant difference from the 9% program where the allocation of annual credit authority is capped. Given the competitiveness and greater subsidy provided by the 9% LIHTC, it is wholly appropriate that SC Housing place limits on the total amount of 9% credits available to development while still structuring differing limitations for the 4% program.

Secondly, **Dominium urges SC Housing to modify the draft QAP to reflect a developer fee maximum between fifteen and twenty percent.** This change would produce a per unit developer fee of approximately twenty-five thousand dollars per unit and adhere to typical standards of SC Housing's peers.

Lastly, if the developer fee maximum is increased, **Dominium suggests that SC Housing require any developer fee over \$3,500,000 be deferred and paid through cash flow, so long as it can be repaid within a 15-year period.** This change would not only limit the cash fee of initial developer fees but would assist the financial feasibility and long-term success of developments in-line with IRS guidance.

In closing, Dominium greatly appreciates your consideration of our comments and looks forward to working with you to create quality affordable housing opportunities for the citizens of South Carolina.

If you have any questions or would like to discuss any of these items further, please do not hesitate to contact Jordan Jones at [REDACTED] or via email at [REDACTED] at any time.

Sincerely

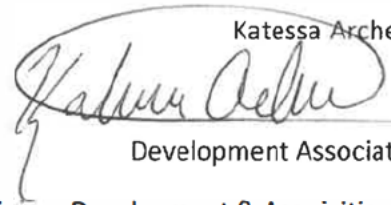
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