

# Draft SC Housing State Tax Credit Policies Implementing Code of Laws Section 12-6-3795

## I. General Requirements

- A. Projects must comply with all of the following for owners to initially claim the state tax credit (STC).
  1. Consists of one or more building(s) qualified for federal low-income housing tax credits (LIHTC) under Internal Revenue Code Section 42.
  2. All buildings placed in service after January 1, 2020 and before December 31, 2030.
  3. Has restricted rents that do not exceed 30% of income for at least
    - 40% of units occupied by households with incomes of 60% or less of the median income, or
    - 20% of units occupied by households with incomes of 50% or less of the median income.
  4. The owner provides a report (Report) to SC Housing detailing
    - why the STC is necessary to undertake the project, or
    - how the STC will benefit the tenants (including, but not limited to, reduced rent).
  5. Receives an Eligibility Statement from SC Housing.
  6. Those awarded STCs in 2020 also must comply with any applicable SC Housing Bulletin(s) and decisions made during application review.
- B. Claiming the STC each year during the credit period depends on the project remaining in compliance with Sections I(A)(1) and I(A)(3) above plus all other applicable LIHTC requirements.
- C. SC Housing will issue Eligibility Statements and monitor for noncompliance; it has no role in assessing specific taxpayers' ability to reduce tax liability. Owners will need to consult with their own tax professionals.

## II. Preliminary Determination and Eligibility Statement

- A. Award and receipt of the STC is a two-step process.
  1. SC Housing will issue a Preliminary Determination of Project Eligibility based on
    - the Report,
    - meeting the criteria in either Section II(B) or II(C) below, and
    - its consideration of local support.
  2. After placed in service, if the project remains in compliance with all applicable conditions and requirements, SC Housing will issue an Eligibility Statement along with the Form(s) 8609.
- B. The STC is necessary to undertake the project.
  1. Projects using tax-exempt private activity bonds and 4% LIHTCs are presumptively eligible for the STC regardless of when awarded. Each applicant or owner must submit a Report and pay the re-underwriting fee. SC Housing will ensure projects are not over-sourced and also may reduce the amount of developer fee beyond the limit in the applicable qualified allocation plan.

*As noted in Bulletin #11 (posted June 5, 2020), interested parties are welcome to provide input on SC Housing's policies concerning the STC and its application to awards that have not yet placed in service. Please provide such comments to [taxcreditquestions@schousing.com](mailto:taxcreditquestions@schousing.com) by 5pm June 26, 2020.*

2. For awards of 9% LIHTCs made in 2020, SC Housing will set the mix of its sources, including the STC and appropriated programs. Awarded applicants may have the option to not receive the STC (pending future guidance). If so, and some applicants make such a decision, the result would be fewer awards.
3. Owners of 9% LIHTC projects awarded before 2020 may submit a Report detailing the following:
  - Specific increases in hard construction costs.
  - Why the costs were necessary (not optional).
  - The amount exceeds the budgeted construction contingency.
  - When the owner informed SC Housing in advance of paying for the increased expenditures.
  - The STC is not replacing any reduction in equity invested for LIHTCs.
  - The deferred developer fee will be 15% of the total.

SC Housing will review and make a decision, which may include engaging third party professionals (costs paid by the owner).

- C. In the alternative to Section II(B)(3) above, owners of 9% LIHTC projects awarded before 2020 may submit a Report detailing how the STC would benefit tenants.
  1. A reduction in rents for some and/or all units made possible by equity for the STC replacing must-pay debt. SC Housing may decline to issue a Preliminary Determination if the result would be
    - an excessive concentration of extremely low-income households, or
    - impairing occupancy or lease-up at other LIHTC projects in the market area.Owners may propose other forms of tenant benefits instead of or in addition to reduced rents.
  2. Below is a non-exclusive list of what SC Housing will not consider in its assessment of how equity invested for the STC would benefit tenants.
    - New or increased reserve accounts, regardless of whether required by a funding source.
    - New or increased fees paid to guarantors, members/partners, funding sources, or other parties with an interest in the project.
    - Fully or partially replacing below-market sources (e.g., local government HOME funds).
    - Replacing any reduction in equity invested for LIHTCs.
    - Buying land for future phases of the project.
  3. SC Housing will review the Report and make a decision, which may include engaging third party professionals (costs paid by the owner). The deferred developer fee will be 15% of the total.

### III. STC Processes

- A. SC Housing will determine the amount of equity used for STC underwriting based on applicant/owner representations, commitment letters, and input from syndicators.
- B. Eligibility Statements will include an amount of STCs.
- C. Owners must inform SC Housing at least 15 days in advance of STC equity closing if the amount will vary by more than 5% from the commitment letter.

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