

## **2019 Clarifications**

**All references to the QAP in this document refer to the 2019 Qualified Allocation Plan.**

**Received by February 8, 2019:**

Question 24:

Section 2.7 of the QAP states that ADOH will not consider waiver requests with respect to any scoring category. Will it be possible to obtain waivers on the terms of ADOH Gap Financing, since it is not in Section 2.7?

ADOH Response:

*No. QAP Section 2.7 addresses scoring categories; QAP Section 2.8 addresses the scoring tie-breaker criteria. If it becomes necessary to use the tiebreaker in Section 2.8 in order for a Project to be eligible for a Reservation, any request for ADOH Gap Financing would impact the Project's eligibility for a Reservation. All other funding sources aside, ADOH Gap Financing in the Project's sources has the potential to reduce the amount of Tax Credits required for Project feasibility, and thus decreasing the percentage of Tax Credits in the tiebreaker ratio. The greater the amount of ADOH Gap Financing, the lower the amount of Tax Credits required for feasibility. A lower amount of Tax Credits would decrease the percentage of Tax Credits in the Development Budget. The lower the percentage of Tax Credits, the better the prospects of winning the tiebreaker.*

*Accordingly, the finality of the terms and conditions of the ADOH Gap Financing is not subject to waiver. As stated at the Application Workshop, no waivers will be granted regarding the terms and conditions of ADOH Gap Financing. **In order to remain eligible to compete in the Tie-Breaker described in Section 2.8, Applicants requesting ADOH Gap Financing will need to ensure that each Financing Commitment included in Tab 9 Financial Ability to Proceed does not conflict with ADOH Gap Financing terms and conditions listed in the QAP.***

*For example, ADOH would review:*

- *Letters of Intent from syndicators to confirm that the distribution of cash flow provisions lists ADOH's payment in proper amount and priority of payment;*
- *Letters of Intent from permanent lenders to confirm that the amount of ADOH Gap Financing and minimum hard payment were incorporated into its underwriting and loan sizing and that there are no restrictions on the use of Surplus Cash to repay ADOH;*
- *Letters of Intent from other sources of financing, including but not limited to Local Government, to confirm that ADOH's payment will be made in the priority listed in the QAP and that payment to these lenders would be deferred until ADOH's Gap Financing is repaid.*

*In the event that ADOH deems a Financing Commitment to be unclear or non-compliant with the QAP, in accordance with QAP Section 7.1(D)(1)(f), the Applicant will be provided ten business days to secure a commitment for an alternate source of permanent soft funds or to correct the Financing Commitment Letter of Interest to ADOH's satisfaction before making a determination not to award Tax Credits to that Project.*

**Question 25:**

Site Control - Page 53 of the QAP states "As of the effective date for the Project in 24 CFR 58.22, conditional purchase contracts may only be used for the acquisition of existing multifamily residential properties. Land must be acquired through a purchase option". Can you please explain the difference between a conditional purchase contract and a purchase option? For vacant land, could we use a conditional purchase contract as long as it contained the required language that it is subject to completion of the environmental review?

**ADOH Response:**

*If the Applicant is requesting ADOH Gap Financing, the answer to the second question is "no". Applicants should refer to the memorandum that HUD issued on August 26, 2011 entitled Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58 wherein HUD states "The real estate option agreement gives the potential buyer the exclusive right to buy the property at a specific price within a specific time period. The option agreement does not impose any obligation upon the potential buyer to purchase the property. The option agreement does obligate the seller to sell at the specified price if the potential buyer exercises the option to buy in the manner described in the contract." Regarding a conditional purchase contract it states: "The conditional contract includes condition(s) that must be met for the obligation to purchase to become binding. Specifically a conditional contract binds the buyer to purchase the property if and when the condition(s) contained in the sales contract are met." In the memorandum, HUD restricts the use of "conditional contracts" (described as a conditional purchase contract in the QAP) "to the purchase of existing structure that will be retained for the same use, with or without minor rehabilitation of the structure".*

**Question 26:**

Planning and Zoning Verification - The PowerPoint said applicants must submit "Copy of Code Section" in this tab. What specifically are you looking for here? Code sections can be quite lengthy, trying to determine what information you are looking for.

**ADOH Response:**

*Section 2.9(H)(1) of the QAP requires **evidence** that the property on which the Project is to be built or rehabilitated is zoned for the proposed use at the time of Application with no additional zoning,*

*variance, or use permit approvals required. The Project, as proposed, must be able to be built on the parcel, as of the Application Deadline. A copy of the Code section that is highlighted showing that the Project may be built as proposed is one form of evidence that may be used for this purpose.*

**Question 27:**

For purposes of calculating Total Project Square footage, are uncovered exterior stairways included or excluded? If there is no roof over and no pad below, HUD standards do not include the stairways in the gross area. Is this also true for purposes of the QAP and, specifically, for calculating building efficiency for purposes of scoring?

**ADOH Response:**

*Uncovered exterior stairways are included in the Total Project Square Footage. The Total Project Square Footage is based upon the Building Owners and Managers Association (BOMA) standard – not a HUD standard. BOMA and the QAP state that the Total Project Square Footage (also known as the Construction Gross Area) includes structured unenclosed areas, such as ... exterior stairs and corridors.*

**Question 28:**

Per Section 2.2 of the QAP (Pg. 29), it states that no more than two (2) Municipal/County Projects can be funded in any tax credit round. What is defined as a Municipal/County Project and what is considered a Tax Credit round?

**ADOH Response:**

*A Municipal/County Project is defined on page 13 of the QAP as a Project developed by a municipality incorporated under A.R.S. § 9-101 et seq. and/or county formed under A.R.S. § 11-101 et seq. and/or affiliated entity of such municipality or county with their Co-Developer. A Tax Credit Round is the annual competitive 9% Tax Credit competition for the year.*

**Question 29:**

Will ADOH permit residents to be responsible for the cost of water to their units if such units are individually sub metered for water and the project owner deducts water as part of the UA calculation?

**ADOH Response:**

*No. Section 2.9(M)(1) of the QAP requires that Utility allowances be prepared by a Certified RESNET Home Energy Rater (“RESNET Rater”). RESNET Raters do not evaluate the usage or cost of cold water.*

**Question 30:**

In reviewing the cost certification forms for the related party GC, our accountants have asked us to clarify the process for auditing when a subcontractor is a related party to the GC (where the GC and developer are also related parties). Can you please provide detail on the scope of work for accountants when this is the case? It affects their estimated quote for proposed cost certification services.

ADOH Response:

*Accountants should refer to ASC 850 regarding the definition of a related party, and may refer to AU-C Section 550 published by the AICPA in 2018 for auditing methods to determine related party transactions.*

Question 31:

Should the map to be inserted at Tab 11 of “existing LIHTC and any other governmental subsidized housing developments within five (5) miles of the Project site” include only projects currently within the LIHTC compliance period (e.g., placed in service in or after 2003) or all projects that have received allocations at any time from ADOH?

ADOH Response:

*The map should include “existing LIHTC and any other governmental subsidized housing developments” as of the Application Deadline. Allocations of LIHTC from 1986 to 1989 with expired Compliance Periods do not have to be included, if the properties are no longer under any affordability restrictions. Likewise, if a LIHTC property’s applicable Extended Use Period or other governmentally subsidized housing development’s period of affordability has expired, it is not necessary to include them on the map.*

Question 32:

If a developer is providing a first mortgage for a project through an affiliated entity and is applying for ADOH Gap funds, does it meet ADOH’s GAP underwriting requirements if the ADOH loan is in first payment position but not necessarily first lien position?

Does it matter if the loan provided by the developer is soft or hard?

ADOH Response:

*ADOH Gap Financing is not eligible to be used as the primary debt on a LIHTC property, except in rare instances where the Project cannot support conventional debt (i.e., some supportive housing projects). QAP Section 7.1(C)(i) clarifies that the payment for ADOH Gap Financing shall fall below the first lien holder’s permanent loan, secondary hard debt, the cost of Permanent Supportive Housing Supportive Services (where permitted in the QAP), the investor’s asset management fee, and Deferred Developer Fee in priority of payment.*

*QAP Section 7.1(C)(b)(I) clarifies that “Financing provided by a non-arm’s length lender must be on terms at least as favorable as competitive market rate product provided to other Projects within the same tax credit round. Inclusion of prepayment penalties, or other penalties that allow the non-arm’s length lender to foreclose or create excessive interest accruals will not be permitted. The interest rate may not be higher than the highest arm’s length primary debt transaction in the 2019 Tax Credit round.”*

**Question 33:**

The QAP states that, for purposes of the building efficiency points, the apartments must be within the minimum and maximum sizes shown on page 42 of the QAP, with the qualification that these exclude “any Balcony, Porch, Deck.” The QAP also says “The square footage in the Form 12-1 schedule must match the square footages listed on Form 3 submitted with the Application.” (Section 2.9(L)) The Net Residential Square Floor Area shown on line 73 of Page 6 of Form 3 is taken from the sum of the sizes shown in the column titled “Residential Floor Area for Unit”, and because this must match the Total Residential Floor Area on Page 4 of Form 3, it seems clear that the unit floor area shown must include balconies, porches, or decks.

We propose to build units that are close to the maximum sizes shown on page 42, not including balconies and decks. For example, our proposed 1-bedroom unit is 730 SF, plus a balcony. The maximum size allowed is 735 SF, net of the balcony. Assuming that the balcony must be included in the calculations on Page 6 of Form 3, that form will show a unit larger than 735 SF:

Unit size net of balcony:	730
Average balcony:	40
Total RSF including balcony	770

The size that will be shown on Form 3 exceeds the maximum, but it is within the permissible size range because the balcony is excluded for purposes of building efficiency. Should we include a narrative explanation in Tab 1, Tab 3, and/or Tab 12, or is there another way this should be addressed?

**ADOH Response:**

*The Total Residential Floor Area (“RFA”) on Form 12-1 in cell G:28 should match the RFA in cell F:11 on tab 4 of Form 3 and O:73 on tab 6 of Form 3. If the RFA of a Unit type in column G of Form 12-1 is greater than the RFA permitted in Section 2.7(D) on page 42 of the QAP due to a Balcony, Porch or Deck, then ADOH will determine whether the Unit size meets the limitation in Section 2.7(D) by dividing the “Residential Floor Area (Interior)” (column E) by the “Total Number of Units by Type” (column D) on Form 12-1 for that Unit type. (Applicants may view the cell descriptions by clicking “View”, then “Headings” in the menu bar on the top of a form.)*

*As a point of clarification, the following phrase in Question 32, “because the balcony is excluded for purposes of building efficiency,” may be misinterpreted by others. A Balcony, Porch or Deck is*

*included in the calculation of Total Project Square Footage. If a Balcony, Porch or Deck is larger than 100 square feet, only the first 100 square feet is included in the Residential Floor Area for purposes of the Building Efficiency calculation. The remaining square feet of a larger Balcony, Porch or Deck would be excluded from Eligible Basis, but added to the "Other" square footage on the bottom portion of Form 12-1 for purposes of the Building Efficiency calculation.*

**Question 34:**

I have a question I hope you can clarify for me.

I have had several clients question how the square footage we measure is different, than what is required in the QAP.

RESNET states that conditioned floor area is based on ANSI Standard Z765-2003, which states that the calculation of square footage for attached dwellings is "the sum of the finished areas on that level measured at floor level to the exterior finished surface of the outside wall or from the centerlines between houses". Patios and balconies are not included.

Whereas the QAP defines "Residential Floor Area" means the total net square footage of the floor space in all Units (measured from paint to paint of the interior of the perimeter walls) including closets within the Units and Balconies, Porches or Decks (to the exterior edge of any railing) attached to the Units for the sole use of the tenants occupying the Units.

My clients want to make sure that they are not going to be deducted points or not awarded because of these differences.

**ADOH Response:**

*ADOH bases the Building Efficiency scoring on the Form 12-1. While the ANSI Standard Z765-2003 will result in higher square footages being listed on the utility allowance schedule based upon the area of the exterior wall, the square footage listed in the utility allowance inserted at Tab 13 should be reasonably consistent with the Units described throughout the Application.*

**Question 35:**

For Developer Compliance Training, does ADOH require the person who is the primary contact for the application to also have the qualifying Compliance Training or can it be anyone on staff of the developer? If it can be anyone on staff with the developer, how should we demonstrate that person's involvement in the project or their role in the organization?

**ADOH Response:**

*The Developer Compliance Training required at QAP Section 2.5(C) must be completed by the Developer, Co-Developer, or Consultant. Developer means the Person identified in Form 3 and Tab*

*6/Form 6 as the Developer for the Project. A Person may be an individual, partnership, corporation or limited liability company, trust or other entity. Thus, an individual who an employee of the Developer may complete the Developer Compliance Training on behalf of the Developer if that employee is involved in the preparation of the Application.*

**Question 36:**

Having trouble truly understanding the last sentence of 'Residential Floor Area' definition on page 18 of QAP. Here is the sentence: "First floor patios are not included in Residential Floor Area, as they are not part of the Total Project Square Footage." The definition of 'first floor patio' is what is confusing to us. Do you consider a 'patio' an open pad that is covered by balconies in a multi-floor situation like the following Project 1 photo?



Or

Do you still consider it a 'patio' if there was a built privacy separation at the exterior perimeter of pad to match the spirit of railings of above floors like the following Project 2 photo?



Or

Is the QAP specifically addressing conditions such as the following Project 3 photo patio, which is not covered nor connected to the structure?



**ADOH Response:**

*Photos 3 is a patio because it is not a Porch or Deck. A Porch or Deck means an unenclosed floor surface contiguous to a building that is suitable for use by an occupant and supported above the ground on at least two opposing sides by an adjacent structure, and/or posts, piers or other independent supports. A Porch or Deck may be covered or uncovered. A Porch or Deck of up to 100 square feet may be included in the Eligible Basis of the Project and included in the Residential Floor Area for purposes of calculating the building efficiency in the Building Efficiency scoring category. Photo 1 is supported above the ground by a wall on one side with a post on the opposing side. Photo 2 is supported above the ground with walls on all four sides (two of which are pony walls).*

**Received by January 4, 2019:**

**Question 12:**

Under Building Efficiency there is no mention of Rehabilitation projects. Does that mean that Rehab projects must meet all the same requirements as new construction, even minimum residential floor area?

**ADOH Response:**

*No, Minimum and Maximum Residential Floor Area does not apply to Rehabilitation Projects, so long as the floor plan of the Unit is not being changed. If the existing floor plan of a Unit is changed, that Unit must meet the Minimum and Maximum Residential Floor Areas stipulated in Section 2.7(D) of the 2019 QAP. However, all Projects, including Rehabilitation Projects, are required to meet the efficiency ratios stipulated in the Section 2.7(D) of the 2019 QAP in order to receive points associated with the Building Efficiency scoring category.*

**Question 13:**

It looks like the department removed the prohibition from a developer selling appreciated property to a tax credit partnership and continuing to be the developer or consultant in the deal. Can you confirm my understanding?

ADOH Response:

*The answer to your question depends upon whether the appreciated property includes buildings, which are currently, or have been used for affordable housing in the past. Please refer to 2019 QAP Section 7.1(C)(4)(a)(i)(1) beginning on page 109, which describes the implications of several scenarios, along with the definition of Principal beginning on page 15 of the 2019 QAP.*

Question 14:

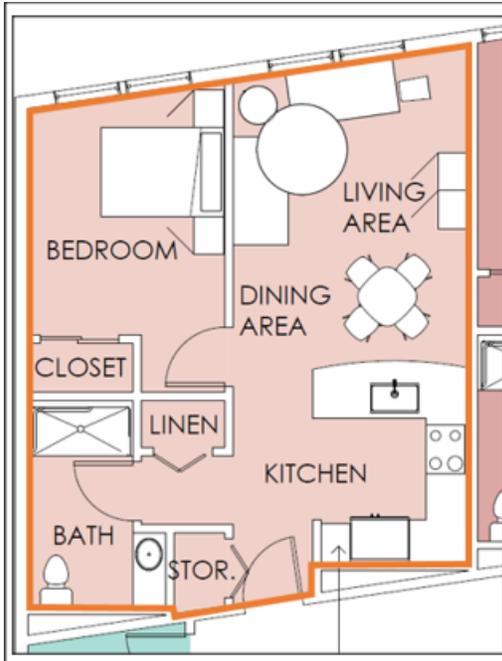
I am filling out the new form 12-1 and it has a line "Inside Walls: Do not include walls to interior closets)". What square footage are you looking for?

ADOH Response:

*The answer to your specific question is below under **Inside Walls**. For clarity and context, this response provides a more comprehensive answer regarding the expectations for Form 12-1.*

*Form 12-1 breaks down all of the area described in the Total Project Square Footage definition on page 22 of the 2019 QAP. It requests:*

- 1) **Residential Floor Area** broken down between the interior space and exterior Balcony, Porch or Deck. The interior of the unit is measured based upon the definition of Residential Floor Area ("RFA") on page 18 of the 2019 QAP.



*In the example to the left, all of the area within the darker orange line is included in the Residential Floor Area.*

*Any Balcony, Porch or Deck that is private open space associated with a Unit is limited to 100 square feet of usable space for purposes of the Building Efficiency scoring category and Eligible Basis. Any walls associated with the Balcony, Porch or Deck that are not metal railings would be included in **Inside Walls** below. Space in excess of this limitation must be included under the **Other** category below, and explained on a separate sheet. The footprint for the stairs on each floor of a Unit with more than one level are included in the calculation of the Residential Floor Area.*

- 2) **Common Areas, Circulation, Building Services**, which describes the interior paint-to-paint measurement of these spaces. Elevators and stairs are included here. Similar to the RFA, there is no requirement to measure interior closets in these areas separately, but the entire closet and its accompanying walls in the room would be included in this measurement. The Total Project Square Footage is the total of all the horizontal floor areas (as viewed on a floor plan) of all floors of a building contained within their building perimeters. Thus, the footprint for all stairs and elevator on each floor that are not located inside a Residential Unit are include in the circulation space of the building.
- 3) **Structured Parking Garage**, which describes the new square footage of this structured space from interior finished surface to finished surface.
- 4) **Other** includes space such as areas with restricted headroom (i.e., attics), HVAC shafts, pipes, flues, and other vertical penetrations that are not described elsewhere, plus any Balcony, Porch or Deck space in excess of 100 square feet that is associated with any Unit.
- 5) **Inside Walls** includes all vertical walls inside the building perimeter that are not specifically excluded from another measurement described herein, such the walls that within the perimeter of

*a Unit described in the definition of RFA. All walls are measured from finished surface to finished surface. It includes the demising walls between Units, the walls enclosing the building perimeter measured from the interior finished surface to the exterior of the building envelope, code-required enclosing walls between Units and the adjacent Common Area, Circulation and/or Building Services space, and between the Common Areas, Circulation and/or Building Services areas, and any other walls that are not specified herein that are included in the Total Building Square Footage.*

**Question 15:**

Will a developer receive developer experience points if past projects do not include rental and/or LIHTC experience. Previous development experience includes homeownership of like size and federally funded (NSP/CDBG/HOME) developments.

**ADOH Response:**

*Yes, if the housing was limited to low-income households. Section 2.7(A) provides points for "experience in the development of LIHTC or Federally Subsidized low income housing projects". Thus, the projects claimed for points must be housing for low-income households and include as a funding source either LIHTC or source(s) described in the definition of Federal Subsidy on page 9 of the QAP.*

**Received by December 21, 2018:**

**Question 1:**

Trying to understand how income averaging scoring is proposed to work. To score maximum 35 points I believe this is saying average income of the low income units has to be at 50% or less to score. That said I don't understand item 2 on page 126 of draft 2 redline that states the average income of the Units shall be limited to 58% as a safe harbor. I.e., would the average need to be 50% or less to score?"

**ADOH Response:**

*The 50% average income relates specifically to scoring. Applicants competing in the 9% competitive round are subject to Section 2.7(G) to calculate their score, which requires no more than 50% average income, among other requirements, in order to earn the 35 points on non-Tribal Set-Aside Applications. The 58% limitation in Section 7.1(F)(2) is an ADOH compliance ceiling for all Tax Credit Projects electing the Average Income minimum set-aside on Form 8609, including non-competitive 4% Tax Credit Projects.*

Question 2:

If a non-basis amenity such as storage is included on the site plan at submittal, but then the Developer subsequently opts not to build the storage, will the Developer be required to build it?

ADOH Response:

*Yes, Developers are expected to deliver what is promised in the Application. 2019 QAP Section 5.5 states that "Development Team members with Controlling Interest in the Project must deliver a Project as described in the Application for Tax Credits unless ADOH approves a Material Change request in writing." Section 7.1(D)(1)(d) further states: "In order to maintain the eligibility for ADOH Gap Financing after a determination is made under Section 7.1(D)(1)(f) below, the Applicant must deliver the Project as described in the Application for Tax Credits."*

Question 3:

2019 QAP Section 7.1(C)(3)(i) states that "All soft financing, including seller carryback loans and related party loans shall fall below ADOH Gap Financing and Local Government financing in priority of payment." Can you please clarify the definition of related party loan?

ADOH Response:

*A related party loan is one that is extended to the borrowing entity by an Affiliate of a member of the Development Team. See definitions of Affiliate on page 4 and Development Team on page 8 of the 2019 QAP.*

Question 4:

In reviewing the latest draft of the 2019 QAP, the limitation of one (1) approved project per Developer/Co-Developer/Development Team poses some interesting challenges for partnerships/joint-ventures with other, quality non-profit organizations that would like to work on LIHTC projects.

I'm wondering if a group that meets the Developer Experience requirements of Section 2.7.A. of the 2019 QAP but still chooses to work with an experienced development group like ours as a Consultant (per the draft 2019 QAP – a "Consultant" means an advisor to the Development Team or to any member of the Development Team.) not for the Developer Experience points, but rather for our ability to advise on practical LIHTC issues and practices, would be viewed by the Department as truly a Consultant and not a member of the Development Team? Any consulting fees would be based on actual advisement time at reasonable rates directly by the non-profit group themselves and not the Owner or Applicant.

Of course the premise of this question is that we plan to submit our own 9% LIHTC application but we don't want to jeopardize that application by assisting another non-profit group as a Consultant.

ADOH Response:

*Section 2.2 of the 2019 QAP limits the Maximum Reservation to “one (1) Project in any Application Round for any Developer.” This means that neither a Developer, nor any of its Affiliates may participate in a Project as a Consultant and earn a fee for doing so. Section 7.1(C)(4)(f) states that the Developer Fee includes “all consultant fees to perform development work including but not limited to preparation of applications, and representation of the Applicant to obtain entitlements, coordinate utilities, inspect construction, purchase furniture and fixtures.”*

Question 5:

If a developer is aiding a project other than their own strictly on a consulting basis, having no part of the ownership or developer fee, would this consulting relationship constitute a violation of the rule?

ADOH Response:

*Section 2.2 of the 2019 QAP limits the Maximum Reservation to “one (1) Project in any Application Round for any Developer.” This means that neither a Developer, nor any of its Affiliates may participate in a Project as a Consultant and earn a fee for doing so. Section 7.1(C)(4)(f) states that the Developer Fee includes “all consultant fees to perform development work including but not limited to preparation of applications, and representation of the Applicant to obtain entitlements, coordinate utilities, inspect construction, purchase furniture and fixtures.”*

Question 6:

We are writing to request a clarification in Section 7. Underwriting, D. ADOH Gap Financing and Layering Analysis.

In Section D(1.)(c).(i.), it states that “Payment shall be the greater of: (1) an annual simple interest hard payment to be determined by the ADOH during underwriting and/or (2) Surplus Cash.

How does the ADOH calculate the annual simple interest hard payment, and if the Project’s cash flow cannot support that hard payment, what is the alternative (if any) payment structure, the ADOH will allow?

ADOH Response:

*Pursuant to 2019 QAP Section 7.1(D)(1)(c)(i) the minimum annual payment is determined by ADOH during underwriting. It is generally determined by multiplying the loan amount by the Annual Long-term Applicable Federal Rate (“AFR”) (published through a Revenue Ruling by the Internal Revenue Service on a monthly basis) that is in effect at the time of the assessment, and then is finalized based upon the AFR as of the date of the closing. If the minimum annual payment is greater than the Surplus Cash Flow, then the minimum annual payment will be due. If the Surplus*

*Cash Flow is greater than the minimum annual payment, then the Surplus Cash Flow will be due. Any modification to the amount of the minimum annual payment is determined on a case-by-case basis, in ADOH's sole discretion. See definition of Surplus Cash Flow on page 21 of the 2019 QAP.*

Question 7:

Under the proposed Arizona Department of Housing 2019 Qualified Allocation Plan ("QAP"), 2.5 points will be allocated for sites that are located within one mile of an Urgent Care Clinic or Hospital (Service Enriched Location). I have identified a site that is located near a Hospital that is currently under construction. However, the Hospital will not be completed before the Application Deadline of April 1, 2019. Does the Hospital facility need to be open to qualify as a Service Enriched Amenity?

ADOH Response:

*Yes. Section 2.9(K) states that the "information for each Facility claimed must be complete in order to receive the points for that Facility" The distance is calculated by measuring the distance from the Facility to the property line of the proposed Project, which requires that the Facility be in place at the time the distance is measured. Applicants must demonstrate that the Facility is in place via supporting documentation. For example, Section 2.9(K)(2)(e)(i) states that the "Applicant must provide evidence that twenty-four (24) hour emergency, cardiac services, major surgery and overnight care are provided", meaning that they must currently be available.*

Question 8:

If I am considering a 4% project that will not be placed in service until (at the earliest) 2020, would ADOH permit underwriting using current rent limits inflated by 2% per year? For example, 2018 gross rent for a 60% 2-bedroom unit in Pima County is \$819. With the 2% annual income growth used by ADOH for underwriting, that would increase to \$852 in 2020. (If you believe Novogradac, AMI growth will be more robust than that.) For purposes of sizing the debt and the 15-year pro forma, could I use that projection as my base rent?

ADOH Response:

*No. ADOH underwrites Projects at the rent level that is published as of the date the underwriting is performed at each stage of the Application. ADOH makes a final determination of the amount of Tax Credits for a Project, using the rents in effect at the time of the 8609 submittal.*

Question 9:

The site for our proposed affordable apartment community is owned by an unrelated third-party group ("Property Owner") which is not prepared to sell the property to us outright, but is willing to ground lease the project site to the project development partnership ("Project Partnership") subject to a significant upfront payment in lieu of annual rental payments during the +30 year ground lease period.

Based on our readings of Sections 7.1.C.2.a and 7.1.C.4.a.ii of the 2019 QAP our Project Partnership would not be able to include in this upfront lease payment its ADOH LIHTC application project development budget. Is this correct?

In anticipation that we would not be allowed to include this project cost as part of our development budget for tax credit application purposes, we have proposed to the Property Owner a two-step ground lease structure which would result in the Property Owner receiving its requested upfront lease payment, our being able to finance/pay this required upfront lease payment without any funding from the Project Partnership, and the Project Partnership being able to exclude the inclusion of this payment in its ADOH LIHTC application development budget.

The first step would be a ground lease agreement to be entered into by and between the Property Owner (“Lessor”) and the nonprofit parent entity of the Project Partnership’s nonprofit managing general partner (“Lessee/Sub-Lessor”) (the “Master Ground Lease”). Under the terms of this Master Ground Lease the Lessee/Sub-Lessor would be wholly and solely responsible for making the upfront lease payment to the Lessor.

The second step would include the Lessee/Sub-Lessor entering into a sub-ground lease agreement with the Project Partnership (“Sub-Lessee”) (the “Sub-Ground Lease”). Under the terms of this Sub-Ground Lease, there will be no obligation/requirement for the Sub-Lessee to repay any portion of the Lessee/Sub-Lessor’s upfront lease payment to the Lessor. The Sub-Ground Lease will only require the Sub-Lessee to pay the Lessee/Sub-Lessor a de minimis rental payment of approximately \$100 per year.

The payment made under the Master Ground Lease will not be included as part of the Project Partnership’s ADOH LIHTC application development budget.

Hopefully, this two-step ground lease structure will be acceptable to ADOH as it seems as though it will enable the Project Partnership to address both the Property Owner’s demand for a ground lease w/ upfront lease payment structure and ADOH’s disallowance of the inclusion of any such payment in the project development budget.

ADOH Response:

*You are correct that the Project Partnership would not be able to include an upfront lease payment in the Development Budget.*

*The answer to your two-step ground lease question would depend upon the source of funding for the up-front payment. If the Developer (or an Affiliate) raises funds, either through grant applications or loans, for which the purpose of the grant or loan is related to the Project, then that source would be considered a source to the Project and would need to be included in the Sources on Tab 7 (Section 18) of Form 3. Thus, those funds could not be used to pay an up-front lease payment.*

*If the Developer (or an Affiliate) elects to use a portion of the Developer Fee earned for the Project, or the Developer’s cash on hand, that will not be reimbursed by a grant or loan for which the purpose of*

*the grant or loan is related to the Project, then this structure might be acceptable – depending upon the supporting information and the balance of the Application.*

**Question 10:**

With respect to the following language, “ADOH will expect the Applicant to maximize its lending sources by paying at least the maximum mortgage payment supportable by Project net operating income as described hereafter. The amount of the primary loan shall be fully amortized for no less than twenty-five (25) years, with a loan term of no less than the Compliance Period, written at a competitive market rate of interest and the annual debt service coverage ratio (“DSCR”) shall be no less than one point two zero (1.20) for each year of operation during the Compliance Period and no more than one point one five (1.15) on the earlier of: the date the Extended Use Period expires or the year the loan matures. (The DSCR is the quotient obtained by dividing the annual net operating income by total annual debt service payments for the primary mortgage.)”, what is the Department’s position when a Project in year 16 is operating at a 1.20 DSCR, but then trends downward to a 1.15 DSCR in later years? What does the Department advise the developer to do to reduce the DSCR to meet the language as stated in the QAP? In an attempt to mitigate this issue, we have already maximized our primary debt service with the anticipated interest rate and sizing to a 1.20 as required in the QAP.

**ADOH Response:**

*Section 7.1(C)(3)(b) outlines the parameters that the Department uses to determine whether an Applicant has maximized its lending sources. The term of the loan would impact whether the DSCR falls below 1.15 in later years.*

**Question 11:**

I am registered for the 2019 workshop on January 23. If I’m not listed on the LIHTC application, does another member of the development team need to attend as well?

**ADOH Response:**

*The person who attends the Application Workshop on behalf of the Applicant should be the Developer contact listed on the Form 3 as the Primary or Secondary Contact, the Co-Developer listed on the Form 3, or the Consultant listed on the Form 3 who will be preparing the Application on behalf of the Developer. Please see the following portions of the 2019 QAP: 1) Section 2.5(B), which states that the “Developer, Co-Developer, or Consultant must submit a certificate of attendance from the 2019 LIHTC Application Workshop.” 2) The definition of Consultant on page 7 which “means an advisor to the Development Team or to any member of the Development Team.” and 3) The definition of Development Team on page 8 which “means the entities and professionals assembled to develop and manage the Project, typically including the Applicant, Owner, Developer(s), Co-Developer(s) and*

*general partner or any other related entities in which the Developer or Co-Developer has an identity of interest or a Controlling Interest.”*

**Received by January 4, 2019:**

**Question 12:**

Under Building Efficiency there is no mention of Rehabilitation projects. Does that mean that Rehab projects must meet all the same requirements as new construction, even minimum residential floor area?

**ADOH Response:**

*No, Minimum and Maximum Residential Floor Area does not apply to Rehabilitation Projects, so long as the floor plan of the Unit is not being changed. If the existing floor plan of a Unit is changed, that Unit must meet the Minimum and Maximum Residential Floor Areas stipulated in Section 2.7(D) of the 2019 QAP. However, all Projects, including Rehabilitation Projects, are required to meet the efficiency ratios stipulated in the Section 2.7(D) of the 2019 QAP in order to receive points associated with the Building Efficiency scoring category.*

**Question 13:**

It looks like the department removed the prohibition from a developer selling appreciated property to a tax credit partnership and continuing to be the developer or consultant in the deal. Can you confirm my understanding?

**ADOH Response:**

*The answer to your question depends upon whether the appreciated property includes buildings, which are currently, or have been used for affordable housing in the past. Please refer to 2019 QAP Section 7.1(C)(4)(a)(i)(1) beginning on page 109, which describes the implications of several scenarios, along with the definition of Principal beginning on page 15 of the 2019 QAP.*

**Question 14:**

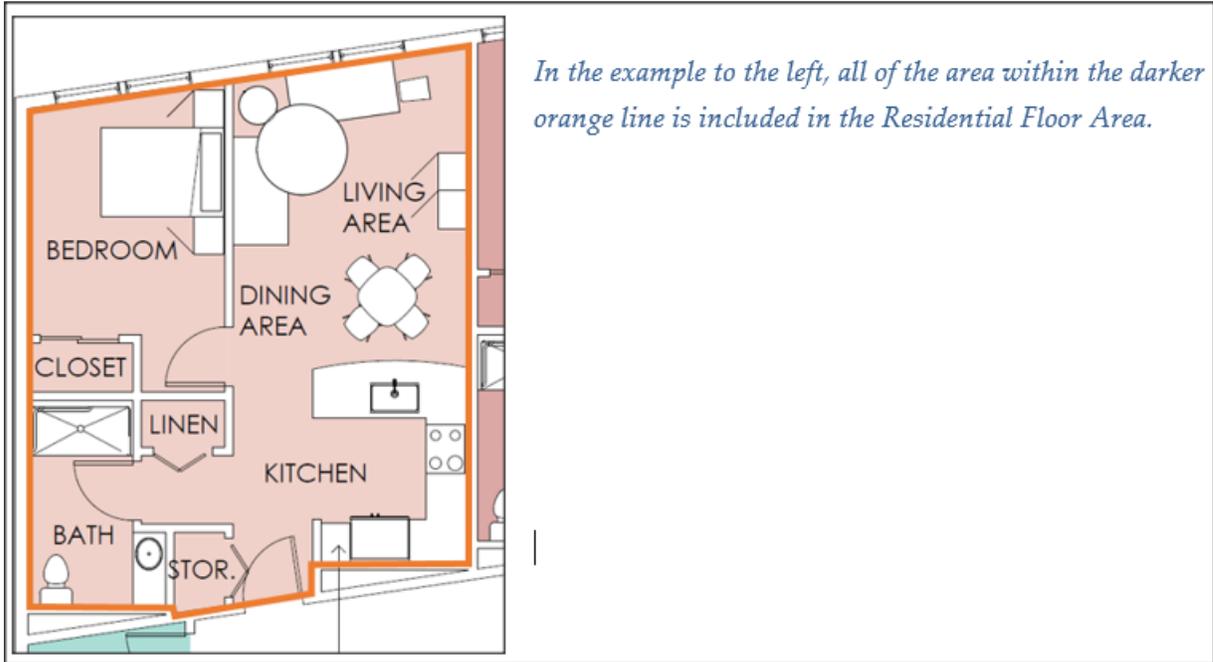
I am filling out the new form 12-1 and it has a line “Inside Walls: Do not include walls to interior closets)”. What square footage are you looking for?

**ADOH Response:**

*The answer to your specific question is below under **Inside Walls**. For clarity and context, this response provides a more comprehensive answer regarding the expectations for Form 12-1.*

Form 12-1 breaks down all of the area described in the Total Project Square Footage definition on page 22 of the 2019 QAP. It requests:

- 6) **Residential Floor Area** broken down between the interior space and exterior Balcony, Porch or Deck. The interior of the unit is measured based upon the definition of Residential Floor Area ("RFA") on page 18 of the 2019 QAP.



Any Balcony, Porch or Deck that is private open space associated with a Unit is limited to 100 square feet of usable space for purposes of the Building Efficiency scoring category and Eligible Basis. Any walls associated with the Balcony, Porch or Deck that are not metal railings would be included in **Inside Walls** below. Space in excess of this limitation must be included under the **Other** category below, and explained on a separate sheet. The footprint for the stairs on each floor of a Unit with more than one level are included in the calculation of the Residential Floor Area.

- 7) **Common Areas, Circulation, Building Services**, which describes the interior paint-to-paint measurement of these spaces. Elevators and stairs are included here. Similar to the RFA, there is no requirement to measure interior closets in these areas separately, but the entire closet and its accompanying walls in the room would be included in this measurement. The Total Project Square Footage is the total of all the horizontal floor areas (as viewed on a floor plan) of all floors of a building contained within their building perimeters. Thus, the footprint for all stairs and elevator on each floor that are not located inside a Residential Unit are include in the circulation space of the building.

- 8) **Structured Parking Garage**, which describes the new square footage of this structured space from interior finished surface to finished surface.
- 9) **Other** includes space such as areas with restricted headroom (i.e., attics), HVAC shafts, pipes, flues, and other vertical penetrations that are not described elsewhere, plus any Balcony, Porch or Deck space in excess of 100 square feet that is associated with any Unit.
- 10) **Inside Walls** includes all vertical walls inside the building perimeter that are not specifically excluded from another measurement described herein, such the walls that within the perimeter of a Unit described in the definition of RFA. All walls are measured from finished surface to finished surface. It includes the demising walls between Units, the walls enclosing the building perimeter measured from the interior finished surface to the exterior of the building envelope, code-required enclosing walls between Units and the adjacent Common Area, Circulation and/or Building Services space, and between the Common Areas, Circulation and/or Building Services areas, and any other walls that are not specified herein that are included in the Total Building Square Footage.

**Question 15:**

Will a developer receive developer experience points if past projects do not include rental and/or LIHTC experience. Previous development experience includes homeownership of like size and federally funded (NSP/CDBG/HOME) developments.

**ADOH Response:**

*Yes, if the housing was limited to low-income households. Section 2.7(A) provides points for "experience in the development of LIHTC or Federally Subsidized low income housing projects". Thus, the projects claimed for points must be housing for low-income households and include as a funding source either LIHTC or source(s) described in the definition of Federal Subsidy on page 9 of the QAP.*

**Question 16:**

Would the cost of rooftop or podium solar be included in the maximum eligible basis for rehabs? There would be a basis reduction based in ITC, of course.

**ADOH Response:**

*Yes, the cost of rooftop or podium solar is included in the maximum eligible basis, regardless of the type of Project being proposed.*

**Question 17:**

In very rural locations, services may not be available within the distance required for points. Is there a way we can compete with very rural properties in the 9% rounds?

ADOH Response:

*What is required to be competitive in the 9% round depends upon the Applications that are received for that round. There is a Balance of State Set-Aside in the QAP, in which your Application may be competitive, depending upon the other Applications that are received.*

Question 18:

We have a question regarding the senior center definition:

“Senior Center” means an off-site facility operated by a Local Government, Tribe or Non-Profit Organization for the primary purpose of delivering on-site daily programs and services designed specifically for the Older Persons populations during the week. Except for meals, for which a nominal donation may be requested, such programs shall be free of charge for all Older Persons.”

All of the Phoenix run senior centers, as well as Phoenix parks and recreation senior programs, require a yearly membership fee. If one is a member, then all programs are free. Is the membership fee exclusive of the program fee? Please verify that the city run senior centers, below, qualify for the 7.5 Senior Center points.

*Adam Diaz Senior Center  
Chinese Senior Center  
Deer Valley Senior Center  
Desert West Senior Center  
Devonshire Senior Center  
Goelet A.C. Beuf Senior Center  
Helen Drake Senior Center  
Marcos de Niza Senior Center  
McDowell Place Senior Center  
Paradise Valley Senior Center  
Pecos Senior Center  
Senior Opportunities West Senior Center  
Shadow Mountain Senior Center  
South Mountain Senior Center  
Sunnyslope Senior Center*

ADOH Response:

*A nominal annual membership fee at a senior center operated by the City of Phoenix or other Local Government, Tribe, or 3<sup>rd</sup> party Non-Profit Organization would not preclude a Project within the applicable distance from receiving points in the 2019 round, so long as a senior who is not a “member” is still permitted to participate in the senior center congregate meal for a nominal fee.*

Question 19:

If a project would like to provide supportive services for a special population, but is NOT seeking points for doing so, are they still required to submit Exhibit B or will an MOU with the non-profit/governmental organization suffice?

ADOH Response:

*Exhibit B is not required if the Applicant is not submitting for points. However, Applicants are cautioned that the cost of the supportive services may not be paid from the Project operating budget. Please also be reminded that representations made in the Application will be required of the Applicant. Section 5.5 Material Changes states "Development Team members with Controlling Interest in the Project must deliver a Project as described in the Application for Tax Credits unless ADOH approves a Material Change request in writing."*

Question 20:

Does a shade structure such as the one in this picture count as part of the total project square footage?



ADOH Response:

*No. The photograph does not depict a building or a structured element of a building. The definition of Total Project Square Footage "includes all residential and Common Area Facilities **buildings** in the Project."*

Question 21:

A question regarding the purchase contract provisions of the QAP. Does the 'no less than 180 days' closing date apply only if closing is conditioned upon receipt of tax credits?

Applicant/Purchaser intends to purchase the property regardless of receipt of tax credits. There will be no conditions to close as of the application date. Closing is scheduled for 5/1/2019.

ADOH Response:

*Section 2.9(G)(2)(b)(i)(2) states "If a purchase contract, or purchase option is submitted, a copy of the agreement must be submitted and the relevant agreement must provide for either a closing date or*

*initial term lasting until the period ending no less than 180 calendar days after the Application Deadline.” The purchase agreement or purchase option must include the provisions required in the 2019 QAP. Notwithstanding the foregoing, an Applicant is free to close on the sale earlier than the 180 calendar days, if closing is not a choice limiting action pursuant to federal funding that is included in the Project’s capital stack.*

**Question 22:**

My supervisor attended the LIHTC Application Workshop offered yesterday. He wants to process his application on April 1<sup>st</sup>; However, is he required to attend one of the 2 hour workshops offered?

I contacted someone about the possibility of adding him to Workshop #1 offered in February 4-5 but she stated the workshop reached full capacity and could not accommodate my request.

**ADOH Response:**

*The requirement at Section 2.5(C) of the 2019 QAP to attend Compliance Training is applicable as follows: “Developer, Co-Developer, or Consultant must attend Compliance Training as defined in this Plan at a minimum of every five (5) years. Developer must provide a Compliance Training certificate as a part of the 2019 LIHTC Application. The compliance overview held at any LIHTC Application workshop is not sufficient to meet Compliance Training requirements. The training course must be a two (2) day certification class designed to support an exam. The exam is optional.”*

*The training scheduled for February 4-5 is not the only option available to a Developer, Co-Developer, or Consultant. “Compliance Training means a two (2) day certification class designed to support an exam taught by authorized providers on operating and managing Projects in conformance with the requirements of I.R.C. § 42, Reg. 1.42-5, the QAP and the LURA. Approved Compliance Training providers are: ADOH, Costello Compliance, E&A Team, Zeffert and Associates, THEOPRO, Quadel, Elizabeth Moreland, National American Indian Housing Council (“NAIHC”), Novogradac, NCHM and Spectrum. ADOH programs must be specifically designated as a valid Compliance Training program that meets the requirements of the QAP.” Therefore, if the attendee at the Application Workshop is required to attend a training as described in the paragraph above, it is possible to obtain training as described in this paragraph.*

**Question 23:**

Can you please confirm that if applicant is applying for FHLB as a source of funding and award letter will not be available until after the April 1 application deadline that a copy of the application should be submitted where the LOI/award letter would normally go in the application binder?

**ADOH Response:**

*Yes, a copy of the FHLB application should be placed behind the other Letters of Interest or Intent and in front of the fifteen year pro forma in Tab 9 of the Application.*