

COMMONWEALTH OF VIRGINIA – DEPARTMENT OF HISTORIC RESOURCES  
STATE AND FEDERAL HISTORIC REHABILITATION TAX CREDIT PROGRAM  
**CLARIFYING DEFINITIONS**

**Completion Date (State Program):**

Per the Virginia Historic Rehabilitation Tax Credit Program (State Program) Regulations, the “completion date” is either the date of the Certificate of Occupancy OR the date that the final, physical, eligible rehabilitation expense was incurred/invoiced. This date should reflect when the actual rehabilitation project was completed, and not an arbitrary date to suit particular financing or business needs. Delayed and or later-invoiced payments, late soft cost payments such as for the CPA report or review fees, AIA Certificates of Final Completion, routine maintenance tasks or purchases, etc. do not extend the project’s completion date for the project after the overall physical rehabilitation project has been completed.

**Submission Deadlines (State Program):**

The only firm submission deadline that the State Program has is that a **complete** Part 3 application (application, photos showing the completed rehabilitation, financial report, and review fee check) must be submitted **within one (1) year of the project completion date** as identified by either the Certificate of Occupancy OR the date that the final, physical, eligible rehabilitation was incurred (see above). This firm deadline is set within the Regulations that govern the Virginia Historic Rehabilitation Tax Credit Program, and there is no ability for flexibility or appeal if this deadline is missed. If the one-year deadline has passed and a complete Part 3 application has not been submitted, the completed project cannot participate in the State Program. It is the responsibility of the owner/applicant to ensure that this deadline is met.

**Project Contact:**

The “Project Contact” is an individual or business entity – other than the applicant/owner – with whom DHR is authorized to speak. DHR Tax Credit staff will only discuss the specifics of the project with this designated contact. *NOTE: The Project Contact may not sign the application materials. All application materials must be signed by the Owner or a legal member of the business entity that owns/controls the property.*

**Timing of State Credits:**

Credits are awarded for the year in which the project or Phase was completed, as evidenced by the final Certificate of Occupancy OR the final physical eligible rehabilitation expense reported. For example, if the evidence of completion date is on or before December 31, 2022, State credits are available for 2022. If the evidence of the completion date is on or after January 1, 2023, State credits are available for 2023.

**When an Audit vs. an Agreed-Upon Procedures Report (AUP) is Required (State Program):**

Projects with total project costs \$500,000 or **more** must have an Audit created by a Certified Public Accountant (CPA).

Projects with total project costs \$499,999 or **less** must have an Agreed-Upon Procedures Report created by a CPA.

Total project costs includes **both** eligible and ineligible costs.

**Reporting Construction Costs on the Schedule of Construction Costs Template (State Program)**

The Schedule of Construction Costs template provided by DHR should be utilized to appropriately break down construction costs into specific line items. It is the applicant/owner’s responsibility to ensure that the contractors and other professionals hired to complete work and any other purchase activities are appropriately broken down and tracked according to the line items found within the Schedules. Additionally:

- Grouping disparate costs into an unspecific line item is discouraged and will likely result in a request for additional information and delays in processing.
- Using the unspecified “Specialties” or “General Requirements” line items for large portions of combined costs will likely result in a request for additional information and delays in processing.

**Developer Fees:**

*Reasonable* Developer Fees may be considered as eligible expenses.

- A typical Developer Fee for a project is generally between 8% and 15% of the total eligible expenses being claimed for the project.
- Only in cases where significant and complex organizational and management activity is necessary should a more substantial Developer Fee (of up-to 20% of the total eligible expenses) be claimed.
- Developer Fees may be deferred for no more than ten (10) years post-project completion.

- If Developer Fees are being claimed, a signed Developer Agreement outlining the responsibilities of the Developer and the repayment terms and timeline (if any portion is deferred) should be submitted with the Part 3 application.

### **Other Deferred Fees (State Program):**

Typically, no other costs excepting an appropriately structured Deferred Developer fee and some types of retainages should be outstanding at the time of the Part 3 submission. The only exception to this is end-of-project-process costs such as the CPA fees, review fees, and consultant fees, which are expected to be paid within a normal billing cycle of 60 days. *NOTE: This guidance is for most projects - individual circumstances can always be addressed on a case-by-case basis.*

### **Related Parties:**

For the purposes of the State Program, a "Related Party" is any entity with any commonality of ownership/investment. This can be common owners/investors between legal business entities, common owners/investors between a Developer and Contractor, or common owners/investors between property owners. Related Parties with financial stakes in the project – owner, Developer, Contractor, etc. – must be disclosed within the Part 3 financial reporting completed by the CPA.

### **Eligible Costs:**

Eligible rehabilitation expenses are expenses incurred by a taxpayer in the material rehabilitation of a certified historic structure and are added to the property's capital account. All eligible expenses must be attributable to the basis of the property. Eligible costs can include both hard and soft costs.

### **Ineligible Costs:**

While not eligible for credits, all costs related to the rehabilitation project should be fully reported to the CPA and included within the financial reporting documents. This includes new construction such as additions or accessory buildings, landscaping, hardscaping, personal property such as appliances, and any other ineligible project development costs such as syndication legal fees, market studies, etc.

### **Expedited Reviews (State Program):**

An Expedited Review – guaranteeing a review response within five business days, not including the date of receipt – may be available at the Program Supervisor's discretion for an additional fee. Expedited Reviews are only available for Part 2 Applications (and no more than two subsequent Amendments) and Part 3 Applications (and any Part 3 Amendments submitted prior to final certification).

A request for an Expedited Review should be made to the Program Supervisor with the following information identified:

- 1) Project address and DHR #.
- 2) Reviewer assigned to the project.
- 3) The anticipated drop-off date of the submission.

The Program Supervisor will then work with the project Reviewer to determine if current workloads can accommodate an Expedited Review and assign a firm date for the submission of the Expedited Review. It is then the responsibility of the owner/applicant to ensure that the materials are received to DHR offices by the indicated date.

If an Expedited Review has been accepted, and an expedited Amendment is submitted (per the above limitations), the applicant must still work with DHR staff in advance of that submission to establish an arrival timeframe such that staff can accommodate the shortened review timeline. Please note that acceptance of Expedited Review requests are not guaranteed, and are solely at the discretion of the Program Supervisor and Review Staff.

### **Submission, Review, and Response to Application Materials:**

All applications and updates to a previously approved scope of work must come as a formal, hard copy application for DHR Staff to review. Electronic submissions are only accepted by NPS, using the formatting and naming conventions they have established. Emails and in-person meetings, while helpful, are always only for informal guidance; any substantial changes to the approved scope of work must be submitted as an Amendment for formal review and approval. In the occasion that there is a discrepancy between emailed/in-person discussions of project details and the physical review file, the physical file of submitted applications and DHR's formal responses on letterhead take precedent.

All application materials should be addressed to the Tax Credit Specialist, unless specifically directed otherwise by the assigned Project Reviewer.

**Typical Review Response Timelines:**

- Part 1, Part 2, and Amendments: approximately 30 days from the date of receipt of a complete application.
- Part 3: approximately 60 days from the date of receipt of a complete application.

If the project is also seeking Federal credits, application materials and DHR staff recommendations are not forwarded to the National Park Service until DHR's review is complete. Typical review timeframes for the Federal Program are an additional 30-45 days after DHR's review response is issued.

**Projects Placed On-Hold:**

Insufficient applications, or those with significant, non-*Standards*-conforming work proposed, will be placed on-hold, which will reset the review timelines once the requested information is received. Incomplete or missing information, blurry or otherwise difficult to read drawings or photographs, conflicts between the written narrative and supplementary information, significant work scope items that do not meet the requirements of the *Standards*, and a failure to respond to prior questions or conditions are the most frequent reasons a project is placed on-hold.

**Warm Vanilla Shell:**

It is understood that sometimes tenant spaces – commercial, office, etc. – will not have an end user identified by the time that the overall rehabilitation project is complete. While future tenant work may be required to suit individual tenants, for a final project certification/completion to be approved, all spaces must be brought to a "Warm Vanilla Shell" state. This means that all new drywall must be finished and painted, ceilings and appropriate flooring (if applicable) should be installed, any systems that were installed should be installed in an orderly and finished manner within approved walls, soffits, or as was proposed and approved, and the space should be conditioned. A space is considered to be "Warm Vanilla Shell" when a theoretical end user can move in and operate out of the space without needing to complete additional work. Common reasons for a Part 3 to be placed on-hold include commercial spaces not meeting this requirement due to the lack of the approved floor finish, mudded but incomplete and unpainted drywall walls, historic plaster or painted masonry left in a ruinous state, or partially installed systems.

**CPA Eligibility to complete an AUP/Audit for the HRTC Program:**

Only Certified Public Accountants working for firms that successfully undergo the peer review process every three years may issue an AUP or Audit to be used with the Virginia Historic Rehabilitation Tax Credit Program.

The CPA completing this report for a rehabilitation project must be independent from the ownership of the project. From the AICPA publication, "Plain English Guide to Independence:"

"Independence of mind is the state of mind that permits a member to perform an attest service without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism. Independence in appearance is the avoidance of circumstances that would cause a reasonable and informed third party, who has knowledge of all relevant information, including safeguards applied, to reasonably conclude that the integrity, objectivity, or professional skepticism of a firm or member of the attest engagement team is compromised."