ALABAMA HOUSING FINANCE AUTHORITY

TAX CREDIT EXCHANGE PROGRAM

2009 ALLOCATION PLAN

Introduction

The American Recovery and Reinvestment Act (the "Act") was signed into law on February 17, 2009. The Act creates two new sources of funding for affordable rental housing. First, it establishes a Tax Credit Assistance Program ("TCAP"), which will provide direct funding assistance to eligible tax credit projects. Second, Section 1602 of the Act establishes a tax credit exchange program (the "Exchange Program"), which permits states to substitute a cash grant in place of an eligible project's low-income housing tax credits ("Housing Credits") awarded under Section 42(h) of the Internal Revenue Code of 1986, as amended, (the "IRC") in an amount not to exceed 85% of the Housing Credits exchanged times 10. Both of the new programs are intended primarily to supplement qualifying affordable housing developments that have been unable to secure adequate equity commitments from an equity provider.

This document sets forth the policy of Alabama Housing Finance Authority ("AHFA") concerning use of the Exchange Program funds to allocate for the completion of affordable residential rental housing.

Tax Credit Exchange Program Overview

AHFA, as administrator of the State of Alabama's Housing Credits, will be able to exchange 100% of credits returned in 2009 plus 40% of the State's 2009 population-based credits and of any national pool credits awarded in 2009. All grant funds must be disbursed to the projects by December 31, 2010.

Exchange Program funds will be used primarily to replace equity in projects that have been unable, after reasonable effort, to obtain sufficient equity to complete the project due to the state of the Housing Credit investment market. AHFA will allocate the Exchange Program funds in the form of a grant which will be recaptured if the project does not meet the 15 year compliance requirements. The amount of Exchange Program funds to be allocated to any project will not exceed the amount, determined by AHFA, needed to make the project financially feasible. The amount, terms and structure will be set by AHFA. General grant terms, project criteria, and owner requirements are outlined below and are subject to change upon additional guidance from HUD or the Treasury.

<u>Grant Terms:</u>

Exchange Program funds will be allocated to the approved projects in the form of a grant. The grant will have a recapture provision of 15 years (20 years if combined with AHFA's HOME). If the project remains in compliance with applicable program requirements for the entire 15 years (20 years if combined with AHFA's HOME), the recapture provision will terminate. If a project defaults on applicable program requirements, within the 15-year recapture period (20 years if combined with AHFA's HOME), all grant funds received by a project must be repaid in full by the owner.

Eligible Projects:

Project's eligible for Exchange funds are new construction, acquisition and rehabilitation of affordable rental units. Based upon AHFA's existing criteria for Housing Credit projects, AHFA will ensure that the allocation is consistent with the requirements of Section 42(m)(2) of the IRC and that the allocation made for a project [building(s)] does not exceed the amount necessary to ensure the financial feasibility of the project throughout the credit period.

Projects that are complete and have received the Internal Revenue Service ("IRS") Form 8609 are not eligible to apply for Exchange Program funds.

The IRS has also ruled that if a project's only allocation of tax credits is under the Gulf Opportunity Zone Act of 2005 ("GO Zone Credits"), the project is not eligible for Exchange Program funds because GO Zone Credits were not awarded under Section 42(h) of the IRC. However, a project that received GO Zone Credits can be eligible for Exchange Program funds if the project also receives an allocation of Housing Credits under Section 42(h) of the IRC. In an effort to enable projects with only GO Zone Credits to be eligible for consideration for Exchange Program funds, AHFA will endeavor to amend its existing Housing Credit allocation plan to allow awards of Housing Credits under Section 42(h) concurrently with an award of Exchange Program funds. Such allocations are dependent upon AHFA's ability to obtain all necessary approvals for this amendment of its existing Housing Credit allocation plan and are subject to further guidance from HUD or Treasury.

Funding of Grants:

Exchange Program funds will be provided to successful applicants as follows:

For projects that are already completed but have not received the IRS Form 8609 and have a funding gap, upon at such time as AHFA may permit under each project's circumstances.

For projects that are being constructed, AHFA will coordinate the funding of draws with the construction lender. AHFA will release Exchange Program funds for payment of construction costs no more often than monthly and only upon receipt of a requisition approved by the project owner, the construction lender and all construction consultants engaged by the lender and/or AHFA. AHFA reserves the right not to fund draws based upon standard exceptions for construction lenders, including without limitation, any default by the owner, the existence or alleged existence of any lien on the project (other than liens securing the construction loan or in favor of AHFA) or payment disputes with subcontractors or suppliers. AHFA reserves the right to contract at the project owner's expense with third parties for administration of construction draws, including without limitation construction consultants or a project's construction lender.

Security:

All obligations with respect to the grant will be secured by a first-priority or subordinate mortgage on the project site and all improvements, whether existing or proposed. In addition, a collateral assignment of rents and leases will be executed in connection with the property. Additional collateral may be required at the discretion of AHFA, based on the nature of the transaction involved.

Guaranties:

AHFA will require that all obligations with respect to the grant be guaranteed by all ownership entities and by all individual owner(s) of all ownership entities. All guarantors must be acceptable to AHFA.

Insurance:

Appropriate insurance will be required for each project serving as collateral for grant obligations. In addition, the applicant, developer and/or builder must evidence insurance coverage to include, but not be limited to, builder's risk insurance, general liability insurance, and loss of rents insurance.

Closing Costs:

The borrower is responsible for all closing costs incurred in connection with the Exchange Program grant, including all AHFA-appointed attorneys' costs.

Declaration of Land Use Restrictive Covenants and Required Written Agreements:

Prior to closing, applicants must execute and record a Declaration of Land Use Restrictive Covenants. The terms of the agreement will require that the covenants remain in effect for the required low-income compliance period. AHFA shall execute a legally binding written agreement with the entity receiving the allocation and it must be executed before any Exchange Program funds are disbursed. The written agreement must set forth (explicitly, or incorporated by reference) all Exchange Program requirements, including the requirements of Section 42 of the IRC, applicable to the project. The written agreement shall impose conditions or restrictions, including a requirement providing for recapture, so as to assure that the qualified low-income building remains a qualified low-income building during the 15-year compliance period (20 years if combined with AHFA's HOME). The written agreement shall require the owner to provide sufficient information to the grantee to report on the use of funds.

Recapture:

Any project that does not remain a qualified low-income building during the 15-year compliance period (20 years if combined with AHFA's HOME), is subject to recapture of all Exchange Program funds received. Recapture amounts will be a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against the owner, any assets of the grant recipient and all guarantors.

Construction Consultant:

AHFA will contract at the project's owner's expense with an independent construction consultant who may, among other duties: (a) perform an up-front analysis of the construction budget to determine the reasonableness of costs as presented; (b) review the preliminary and final plans and specifications of the project (during and upon the completion of the project) for compliance with applicable local, state and federal building codes and ordinances; (c) review work in progress and the completed project for any material defects; and (d) review specifications and make comments and/or recommendations regarding the quality of materials to be used in connection with the project.

Request/Application Process for Exchange Program Funds

AHFA has established a process for requesting Exchange Program funds. AHFA will make available the documents that must be completed in order to request Exchange Program funds. There are threshold requirements that must be met before any person <u>can submit a request</u> for Exchange Program funds, as follows:

- The project must have an allocation of Housing Credits or GO Zone Credits in 2007, 2008, or 2009.
- Evidence satisfactory to AHFA that the applicant has made a good faith effort to secure an adequate equity commitment.
- All applicants must be in good standing with AHFA and all applicable regulations.
- Exchange Program applicants must be able to meet all fair housing and non-discrimination requirements.
- All applicants must meet Housing Credit and financial feasibility requirements.
- AHFA will not consider requests from applicants that could secure syndication for equity for $.86 or more for the original allocation of Housing Credits from AHFA.

AHFA will announce the dates for taking requests/applications for Exchange Program funds.

<u>Selection Criteria</u>

AHFA will award Exchange Program funds based upon a competitive process by which all applicants are scored objectively according to the criteria specified in this document. Efforts to influence this process through the aid of lobbyists or other sources would be futile. Action of this type would be a violation of the allocation plan for Exchange Program funds and could subject offenders to civil or criminal liability.

Through a point scoring system, AHFA will award points to projects that best meet the priority of moving forward. AHFA encourages the participation of equity providers by giving a priority to applicants that were able to secure equity for the original allocation of Housing Credits but due to equity pricing are unable to complete the project. Applicants that could not secure equity or declined to sign a commitment letter will be given a lower priority. AHFA will fill the gap of financing with TCAP and/or Exchange Program financing, but only to a level necessary to achieve financial feasibility based on AHFA's underwriting criteria. AHFA will evaluate each request for funds to determine which projects should receive TCAP and/or Exchange Program funds based on the project's funding sources and the progress of the applicant's project.

All applications for Exchange Program funds, regardless of final score, are subject to the availability of funds and to the ability of the applicant's project to meet the required regulations for TCAP (where applicable) and/or Exchange Program.

Point Scoring System

Points Gained (Maximum of 60 points)

Equity (Maximum 20 points)

20 points will be given to projects that have closed a partnership agreement with an equity provider. The agreement must be for a minimum of $.55 and no more than $.85 for the original allocation of Housing Credits from AHFA.

15 points will be given to projects that have an equity commitment from an equity provider. The commitment must be for a minimum of $.55 and no more than $.85 for the original allocation of Housing Credits from AHFA.

10 points will be given to projects that do not have an equity commitment with an established equity provider and can provide written proof of rejection of the syndication of Housing Credits from at least three equity providers.

Construction (Maximum 25 points)

25 points will be given to projects that have completed construction and have an equity provider with a fully executed partnership agreement. The agreement must be for a minimum of $.55 and no more than $.85 for the original allocation of Housing Credits from AHFA.

20 points will be given to projects that have completed construction and do not have an equity provider due to the equity provider breaching or terminating an executed syndication commitment.

15 points will be given to projects that have closed a construction loan and started construction on the project.

10 points will be given to projects that have closed a construction loan but have not started construction.

5 points will be given to projects that have a construction commitment from a financial lending institution.

Ready to Proceed (Maximum of 15 points)

5 points will be given to projects that have a deed to the property or have entered into an acceptable long-term lease.

5 points will be given to projects that have final stamped plans and specifications.

5 points will be given to projects that have secured building permits.

Points Lost (Maximum of 30)

10 points will be deducted for projects that received a credit allocation outside of AHFA's competitive cycle.

10 points will be deducted for projects that have made changes to the original credit application that was approved for funding without AHFA's approval.

10 points will be deducted for project owners that have projects that are out of compliance with AHFA's policies and regulations.

1 point will be deducted for each missing or incomplete item in the application.

In the event of a tie the projects will be put into an order of preference by the following criteria:

1. 2007 competitively awarded Housing Credits
2. 2008 competitively awarded Housing Credits
3. 2007 competitively awarded GO Zone Credits (with qualifying Housing Credits)
4. 2008 competitively awarded GO Zone Credits (with qualifying Housing Credits)
5. 2007 awarded out-of-cycle Housing Credits
6. 2008 awarded out-of-cycle Housing Credits
7. 2009 competitively award Housing Credits
8. Any project receiving Tax Exempt Bond credits with a qualifying award of Housing Credits

If there still remains a tie, AHFA will fund the project that has the earliest submission date as evidenced by the time and date stamped by AHFA.

The applicant must provide documentation of all scoring items satisfactory to AHFA.

Fees

AHFA will not charge an application fee.

AHFA will be required to perform asset management on projects funded with Exchange Program funds. Projects that have a syndication agreement with an established equity provider will be charged an annual asset management fee of $10,000. Projects that do not have a syndication agreement will be charged an annual asset management fee of $15,000. All first year asset management fees will be due on or before placed in service date. See "Reserve Requirements-Compliance Reserve" below. All unpaid fees will be considered a non-compliance issue and a default under the grant documents.

Owner Caps

No owner shall receive Exchange Program funds for more than three projects that do not have an equity commitment, which includes projects funded in the 2007, 2008, and 2009 application cycles; provided, however, that if AHFA has made allocations of Exchange Program funds to all eligible projects and less than 100% of the State of Alabama's Exchange Program funds have been allocated due to application of the foregoing cap, AHFA reserves the right to award Exchange Program funds to more than three projects owned by the same owner that do not have an equity commitment.

Reserve Requirements

Compliance Reserve. AHFA will require each project owner or developer that receives Exchange Funds for 100% of a project's allocated Housing Credits (i.e., projects with no equity commitment) to put at least 1/2 of the 15% developer fee in a cash reserve account controlled by AHFA. The reserve account will be established in full at the placed in service date. The fee will be refunded in fifteen (15) equal, annual installments until the 15-year compliance period is over if there are no non-compliance issues during the year. The refund amounts will be net of any unpaid asset management fees owed to AHFA.

AHFA will require the project owner or developer that receives Exchange Program funds for any portion of a project's allocated Housing Credits (i.e., projects that combine Exchange Program funds with equity syndication proceeds) will be required to deposit an amount equal to the aggregate asset management fees that will become due to AHFA during the projects compliance period. The reserve account will be established in full at the placed in service date. AHFA will apply this reserve against all asset management fees as and when due.

Replacement Reserve. AHFA will require each project that receives Exchange Program funds to establish a replacement reserve account in an amount equal to one year of AHFA's replacement reserve requirement.

All reserve accounts must be cash deposits. No letters of credit will be allowed to cover any reserve requirements.

Financial Feasibility

AHFA will determine which funds and how much funds will be allocated to each project. AHFA will only award the amount of funds necessary to make a project financially feasible.

Progress Requirement After Commitment of Funds

From the date of the commitment of funds, each applicant has progress requirements that must be met in order to meet the required time for the completion of the project and disbursement of funds. **Failure to comply with any one of the items may cause the commitment to be terminated.** Outlined below are the time constraints set forth in which to obtain the following items:

1.) Within 15 days of the date of the Commitment Letter, the applicant must:

(i.) Submit owner's Certificate of Existence from the Secretary of State (must be dated prior to execution of the reservation letter).
(ii.) Submit the original executed commitment letter from AHFA acknowledging acceptance of the terms and conditions of the Exchange Program.
(iii.) Return any allocated Housing Credits that AHFA has required to be returned in connection with the Exchange Program funds.

2.) Within 90 days of the date of the Commitment Letter, the applicant must:

(i.) Submit a legally binding commitment for construction and permanent financing which details the specific terms of funding and repayment and is not subject to further approval of the creditor's board or credit committee. ***If Exchange Program funds are the only source of equity for a project, the project's construction loan must be for 100% of the costs necessary to complete the project in excess of the Exchange Program funds.***
(ii.) If applicable submit an executed binding commitment for syndication, in form and content acceptable to AHFA.
(iii.) If the project is to be financed by HUD, submit evidence that an application for a Site Appraisal and Market Analysis (SAMA) or Multifamily Accelerated Process (MAP) has been made.
(iv.) If applicable submit the Syndicator Relevant Experience Form in an AHFA provided form.

3.) Within 105 days of the date of the Commitment Letter, the applicant must:

(i.) Provide final stamped plans and specifications.
(ii.) Provide a site specific soils report.
(iii.) Provide an ALTA/ACSM Certified Survey bound within the plans and specifications.
(iv.) Provide standard form of agreement between owner and architect.
(v.) Provide the utility letters.

4.) Within 135 days of the date of the Commitment Letter, the applicant must:

(i.) Provide certified organizational documents.
(ii.) Provide a copy of the complete to-be-built appraisal.
(iii.) Provide construction cost estimate summary.
(iv.) Provide detailed construction schedule.
(v.) Provide standard form of agreement between owner and contractor (AIA form)

5.) Within 165 days of the date of the Reservation Letter, the applicant must:

(i.) Submit a copy of executed construction note or agreement.
(ii.) Take full possession of the site as evidenced by warranty deed or acceptable long-term lease.
(iii.) Provide original recorded Declaration of Land Use Restrictive Covenants.
(iv.) Submit a copy of the building permit.
(v.) Provide proof of construction commencement evidenced by copy of Owner's Notice to Proceed to project's General Contractor.
(vi.) Provide Title Insurance Policy.

(vii.) Provide IRS Form #SS-4 Assignment of Employer Identification Number.

6.) **<u>The owner must</u> complete the project, and all Exchange Program funds must be disbursed by December 31, 2010.**

Should the following actions occur, AHFA's commitment of Exchange Program funds may be terminated:

1.) Site change;
2.) Change in ownership--a change in the parties involved in the ownership entity (e.g., addition of a new general partner/member or removal of an existing general partner/member) without prior written consent of AHFA. Examples of situations in which consideration may be given for a change in ownership include, but are not limited to: death or bankruptcy. Any person or entity, including syndicators, that attempts to circumvent this requirement, may be subject to debarment from all AHFA programs;
3.) Change in syndication structure--a change in the role of the syndicator or in the distribution of funds/allocation to others through syndication as stated in the application without prior written consent of AHFA;
4.) Change in unit design, square footage, unit mix, number of units, number of buildings, etc. (unless changes are required by local regulatory codes);
5.) Change in the general contractor without prior written consent of AHFA;
6.) Change in the management company without prior written consent of AHFA;
7.) Change in the architect without prior written consent of AHFA;
8.) Instances of excessive or flagrant non-compliance on applicant's existing projects;
9.) Any staff or development team member (listed in the application) who has instances of excessive or flagrant non-compliance with AHFA, Housing Credit, HOME, or Tax Exempt Bond regulations on existing projects;
10.) Any staff or development team member (listed in the application) who is presently debarred, suspended, proposed for debarment or suspension, declared ineligible or voluntarily excluded from any transactions or construction projects involving the use of federal funds or Housing Credits;
11.) Applicant has a project with AHFA that is in foreclosure or has been foreclosed;
12.) Any material adverse change relating to the project or owner; and/or
13.) Any AHFA fee returned due to insufficient funds.

The above list of negative actions is not all-inclusive. The commitment letter itself will list other necessary requirements. AHFA may terminate the commitment if any factual information supplied in connection with the project is fraudulent, misleading, or materially incorrect. Determination of whether information is fraudulent, misleading, or materially incorrect will be determined by AHFA in its sole discretion.

<u>Reallocation of Exchange Program Funds</u>

In the event a project fails to meet a progress requirement or violates another requirement that causes its Exchange Program funds to be returned, AHFA will reallocate the funds to the next highest scoring, qualifying project that did not receive Exchange Program funds or a project that received Exchange Program funds and has met all progress requirements and needs additional funds.

Change in or Denial of Exchange Program Funds

The evaluations listed below may result in a possible change in the amount of Exchange Program funds allocated to a project or denial of the total commitment altogether due, but not limited to, one of the following reasons:

1.) Information in the application submitted is determined to be incorrect or fraudulent;
2.) Changes in the actual cost of the project;
3.) Applicant obtains additional subsidies or financing other than those disclosed in the application;
4.) Applicant obtains additional syndication proceeds other than those disclosed in the application;
5.) Subsequent governmental regulations; and/or
6.) Applicant's failure to notify AHFA promptly of any material adverse changes in the original application. Material adverse changes include, but are not limited to, applicant's loss of site control, rights of way, ingress and egress, adverse change in the financial condition of the applicant, and applicant's inability to perform tasks proposed in the application by the deadline set by the applicant and further set or agreed to by AHFA.

Compliance Monitoring

These compliance monitoring procedures apply to all buildings placed in service in Alabama that have received allocations of Exchange Program funds. The compliance monitoring procedures and requirements are as follows:

A. AHFA will verify that the owner of a low-income housing project is maintaining records for each qualified low-income building in the project. These records must show, for each year in the compliance period, the information required by the record-keeping provisions contained in Reg. §1.42-5(b)(1), incorporated herein by reference.

B. AHFA will verify that the records documenting compliance with Section 42 for each year as described in Paragraph A above are retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year. AHFA will also verify that the records for the first year of the credit period are being retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

C. AHFA must receive from the owner of a low-income housing project written certification, under penalty of perjury, as provided in Reg. §1.42-5(c)(1), TCAP, Exchange Program and other applicable HOME Regulations, which certification provisions are incorporated herein by reference. Owners if applicable must also supply a copy of the Schedule A (Form 8609) Annual Statement filed with the federal income tax return of the ownership entity. Both of these documents are to be submitted annually by May 1.

D. AHFA will review the certifications described in Paragraph C above for compliance with the requirements of Section 42, TCAP and Exchange Program.

E. AHFA will inspect at least 20% of the low-income housing projects each year and will inspect the low-income certification, the documentation the owner has received to support that certification, and the rent records for each low-income tenant in at least 40% of the low-income units in those projects. AHFA will determine which tenants' records are to be inspected, in accordance with Reg. §1.42-5(c)(2)(iii). AHFA will also conduct a physical inspection of at least 20% of the low-income units in projects selected for tenant file review.

F. The owner must allow AHFA to perform an on-site inspection of any low-income building in the project through the end of the compliance period. This inspection is separate from any review of tenant files under Paragraph E and will include habitability requirements.

G. AHFA will promptly notify the owner in writing if AHFA does not receive the certification described in Paragraph C, or is not permitted to inspect and review as described in Paragraphs D, E, and F, or otherwise discovers that the project does not comply with Section 42. In such event, the owner will be allowed a correction period to supply missing documentation or to correct noncompliance. This correction period begins the earlier of: (1) the date the notification is mailed or (2) the date of the inspection.

H. During the compliance period, the owner will furnish to AHFA within 90 days of the close of each fiscal year a consolidated statement of financial position, an income and expense statement, and a rent roll of the project for that fiscal year. These items are to be certified by the owner.

I. Compliance with requirements of Section 42 is the responsibility of the owner of the building for which the Housing Credit is allowable. AHFA's obligation to monitor for compliance with the requirements of Section 42 does not make AHFA or the State of Alabama liable to any owner or to any shareholder, officer, director, partner, member or manager of any owner or of any entity comprising any owner for an owner's non-compliance therewith.

J. Owners and managers must attend AHFA's compliance training within 150 days of the disbursement of TCAP or Exchange Program funds from AHFA.

K. Failure to comply with all of the accessible and adaptive design and construction requirements of the Fair Housing Act may result in loss of Exchange Program funds.

L. Provide AHFA with any and all information requested for the purpose of meeting all reporting requirements to Treasury, HUD, Governor's Office, and any other governmental agencies.