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 in the current market.

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

Tax Credit Exchange Program Overview

AHFA, as tax credit agency for 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. **THIS DEADLINE IS IMPOSED BY CONGRESS, AND AHFA HAS NO AUTHORITY TO EXTEND IT.** See "Progress Requirements After Commitment of Funds" herein.

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 applicable 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. AHFA expects to underwrite Exchange Program funding at a level sufficient to include a 15% developer fee based upon a project's reasonable costs as determined by AHFA. The amount, terms and default 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 be subject to a recapture provision of 15 years (20 years if combined with AHFA's HOME) (the "Compliance Period"). If the project remains in compliance with applicable program requirements for the entire Compliance Period the recapture provision will terminate. If a project defaults on applicable program requirements within the Compliance Period, all grant funds received by a project must be repaid in full by the owner.

Eligible Projects:

Projects 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 does not exceed the amount necessary to ensure the financial feasibility of the project throughout the credit period. Projects that receive Exchange Program funds will be required to comply with the requirements for Housing Credits in Section 42 of the IRC.

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

This allocation plan distinguishes between projects that have syndicated Housing Credits and projects that do not have syndicated Housing Credits. For purposes of this allocation plan, a project will be treated as having syndicated Housing Credits only if it has entered into a written agreement with a Housing Credit investor to sell not less than 99% of its existing allocation of Housing Credits for not less than $.50 per dollar of Housing Credits. In order to qualify as a Housing Credit investor, an entity must (a) have purchased Housing Credits in at least three prior projects on or before January 1, 2009, or (b) be a publicly traded corporation, a bank or other federally regulated financial institution, a public utility, a state regulated insurance company, or a wholly owned subsidiary of any of the foregoing.

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, at such time as AHFA may permit under each project's circumstances.

Exchange Program grants will be made available to fund construction costs for awarded projects. For projects that are being constructed, AHFA expects generally to fund construction draws on a pro rata basis with the construction lender, but AHFA will otherwise coordinate the funding of draws with construction lenders, as needed. 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 Exchange Program grant obligations 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.

Eligible uses of funds:

The Exchange Program assistance provided to a project must be made in the same manner and subject to the same limitations (including rent, income, use restrictions and compliance monitoring) as required by the state housing credit agency with respect to an award of Housing Credits to a project (i.e., as required under Section 42 of the IRC and its implementing regulations), and all other requirements of the Act.

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.

Guaranties:

During Construction. During construction, all obligations with respect to an Exchange Program grant, including payment of any recapture amount, will be full recourse to the owner and will be guaranteed on a joint and several basis by all general partners of the owner and by all individual owners, directly or indirectly, of such general partners.

After Construction with Syndicated Housing Credits. For projects with syndicated Housing Credits, the full-recourse nature of the grant obligations and the guaranty requirements will terminate upon satisfaction of certain conversion conditions. AHFA's goal is for the conversion conditions to be satisfied and for the full-recourse and guaranty requirements for each Exchange Program grant to be terminated not later than the project's placed in service date. Conversion conditions for all projects will include standard conversion conditions such as (a) satisfaction of all conditions for closing or conversion of the project's first mortgage financing, (b) receipt of a certificate of substantial completion from the project architect, (c) issuance of a permanent certificate of occupancy for all buildings in the project, (d) receipt of a satisfactory as-built survey, (e) receipt of a final endorsement to AHFA's title insurance policy insuring lien-free completion of the Project, the priority of AHFA's mortgage subject only to first mortgage financing, and updating the survey exception, if any, through the date of the final as-built survey, (f) receipt of an as-built appraisal satisfactory to AHFA, (g) receipt of a satisfactory form of tenant lease, (h) payment of all fees and expenses of AHFA, (i) a satisfactory, final report from all construction consultants engaged on the project, (j) satisfactory certificates from the general contractor, the architect any direct contractor, engineer or materialman that they have been paid in full for all work on the project, or alternatively, that upon payment to such person of a specified amount on the conversion date, such person will have been paid in full for all work on the project; (k) and receipt of evidence satisfactory to AHFA that (1) no event of default exists under the Exchange Program grant or any lender financing; (2) all water, sewer, gas, electrical, telephone and cable television mains necessary to service the Project are completed, owned, operable and serviced by the applicable utility company; (3) all streets and roads providing access to the Project are completed, dedicated and accepted for maintenance by the applicable governmental authority, (4) all curb cuts and easements necessary to provide access to the Project are in effect, duly recorded, if appropriate, and available for use; (5) the project, as built, complies with applicable zoning requirements, and (6) no unsatisfactory environmental condition exists at the project.

After Construction Without Syndicated Housing Credits. If a project does not have syndicated Housing Credits, all obligations with respect to an Exchange Program grant, including payment of any recapture amount, will remain full recourse to the project owner and will be guaranteed on a joint and several basis by all general partners of the project owner and by all individual owners, directly or indirectly, of general partners, even after all conversion conditions have been met. For these projects, all general partners and such individual owners will also be required to provide, for the full Compliance Period, an operating deficit guaranty and a guaranty of replacement reserves.

If a project owner is a limited liability company, the guaranties referenced in this Section will be required from all members who are not Housing Credit investors and from all individuals who are owners, directly or indirectly, of such members.

If a project receives both Exchange Program funds and TCAP funds, the guaranties required in this section with respect to Exchange Program funds will be required only if the requirements for such guaranties in AHFA's allocation plan for TCAP funds have also been met.

Insurance:

Appropriate insurance will be required for each project serving as security 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 project owner 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 the Exchange Program grant, 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 Compliance Period, as defined below. 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 throughout the Compliance Period. 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 throughout the Compliance Period 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 including without limitation the "Security" described above.

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.
- If a project with Housing Credits allocated under AHFA's 2007 or 2008 low-income housing allocation plans does not have syndicated Housing Credits, the project owner will be required in the application for Exchange Program funds to return all existing allocations of 2007 or 2008 Housing Credits. **Submitting an application and returning 2007 and/or 2008 Housing Credits does not guarantee receipt of Exchange Program or any other funds**. See "Selection Criteria" below.
- If a project (a) has a competitive allocation of Housing Credits under AHFA's 2009 low-income housing tax credit allocation plan, (b) has an allocation of tax credits under the Gulf Opportunity Zone Act of 2005 ("GO Zone Credits"), or (c) has any other allocation of Housing Credits that was not required to be returned at the time of the owner's application for Exchange Program funds, the project owner will be required to agree in the application to return its existing allocation of such Housing Credits or GO Zone Credits in whatever amount is determined by AHFA, up to 100%, if the project's application for Exchange Program funds is successful.
- 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.

Return of Existing Credits. In general, AHFA expects to require the return of existing credits in a manner that maximizes utilization of all of the State of Alabama's TCAP and Exchange Program funds for those projects that qualify for allocation under AHFA's TCAP or Exchange Program allocation plans.

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 an equity commitment 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 funding, 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 the TCAP (where applicable), for Housing Credits (where applicable) and the Exchange Program.

Regardless of strict numerical ranking, the scoring does not operate to vest in an applicant or project any right to a reservation or allocation of Exchange Program funds in any amount. AHFA will in all instances reserve and allocate Exchange Program funds consistent with sound and reasonable judgment, prudent business practices and the exercise of its inherent discretion.

Point Scoring System

Points Gained (Maximum of 80 points)

Equity (Maximum 20 points)

20 points will be given to projects that have closed a partnership agreement with a Housing Credit investor. The agreement must be for a minimum of $.50 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 a Housing Credit investor. The commitment must be for a minimum of $.50 and no more than $.85 for the original allocation of Housing Credits from AHFA.

Construction (Maximum 25 points)

25 points will be given to projects that have completed construction and have a fully executed partnership agreement with a Housing Credit investor. The agreement must be for a minimum of $.50 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.

15 points will be given to projects that have closed a construction loan and started construction on the project. Commencement of construction will be confirmed by evidence of construction draws funded by the construction lender.

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 35 points)

5 points will be given to projects that have a recorded deed to the property or have entered into an acceptable long-term lease with a term which began on or before date of the Exchange Program application.

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.

20 points will be given to each project that confirms in its application that it will complete construction and utilize all awarded funds within the deadlines applicable to TCAP funds or Exchange Program funds, or both. As information, as of the date of this plan, projects funded under the TCAP must expend 100% of the TCAP funds by February 16, 2012, and projects funded under the Exchange Program must expend 100% of the Exchange Program funds by December 31, 2010.

Points Lost (Maximum of 25 plus missing item deductions)

5 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.

Application Fees

AHFA will not charge an application fee.

Asset Management Fee

Amount of Asset Management Fee. AHFA will be required to perform asset management on projects funded with Exchange Program funds. AHFA will charge a reasonable asset management fee on a per-unit basis not to exceed AHFA's actual costs for providing asset management services. Projects that have syndicated Housing Credits with a Housing Credit investor that will perform asset management services may be charged a rate less than projects that do not have syndicated Housing Credits. For projects that receive Exchange Program funds and do not have syndicated Housing Credits, all first year asset management fees will be due on or before the placed in service date. All unpaid fees will be considered a non-compliance issue for purposes of all AHFA programs and will constitute a default under the Exchange Program grant documents.

Prepayment of Asset Management Fee. In addition to the Earned Developer Fee Holdback and other reserves, each project owner that receives Exchange Program funds for any portion of a project's allocated Housing Credits (i.e., projects that combine Exchange Program funds with syndicated Housing Credits) will be required to deposit, in a deposit account controlled by AHFA, an amount equal to the aggregate asset management fees that will become due to AHFA during the project's Compliance Period. The prepaid asset management fee will be due and payable in full on or before the placed in service date. AHFA will apply the prepaid amounts against all asset management fees (or other amounts due to AHFA) as and when due.

Owner Caps

No owner shall receive Exchange Program funds for more than three projects that do not have syndicated Housing Credits, 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 syndicated Housing Credits.

Earned Developer Fee Holdback

AHFA will require each project owner or developer that receives Exchange Program funds for 100% of a project's allocated Housing Credits (i.e., projects with no syndicated Housing Credits) to put at least 1/2 of the 15% developer fee in a cash deposit account controlled by AHFA. 100% of the holdback amount will be deposited in this account at the placed in service date. The holdback amount will be released to the project owner in equal, annual installments during each year of the Compliance Period, as defined above, if there are no non-compliance issues during the year. The holdback amounts released annually net of any unpaid fees or other amounts owed to AHFA.

Exchange Program Reserve Requirements

Operating Reserves. Projects that receive Exchange Program funds must comply with the operating and replacement reserve requirements contained in the applicable year's Allocation Plan for Low-Income Housing Tax Credits and/or Action Plan for HOME Investments Partnership Funds, except as modified in the following paragraph.

Replacement Reserve Modification. AHFA will require each project that receives Exchange Program funding to fund its replacement reserve account on the closing date of the Exchange Program grant 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 Requirements 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 commitment 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 2009 Housing Credits or GO Zone Credits that AHFA has required to be returned under the terms of the Exchange Program application.

2.) Within 30 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 syndicated Housing Credits, 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 60 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.) <u>Within 90 days of the date of the Commitment Letter, the applicant must</u>:

(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.) <u>Within 120 days of the date of the Commitment Letter, the applicant must</u>:

(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.) According to Treasury guidelines, AHFA must disburse all Exchange Program grants funds not later than December 31, 2010. **AHFA HAS NO AUTHORITY TO EXTEND THIS STATUTORY DEADLINE, AND** FAILURE TO MEET THIS DEADLINE WILL RESULT IN OWNER'S LOSS OF EXCHANGE PROGRAM FUNDING. Project owners are urged to provide all items to AHFA as soon as possible in order to facilitate meeting this funding deadline.

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., without prior written consent of AHFA, which will be granted primarily when the change is 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.

Reallocation of Exchange Program Funds

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 a 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 after the earlier of (a) the closing of a TCAP construction loan or (b) initial disbursement of Exchange 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 or public disclosure requirements imposed by Treasury, HUD, Governor's Office, and any other governmental agencies.