

Comments and Responses

May 22, 2009: I am writing to make sure I understand your proposed allocation procedure for the ARRA funds (TCAP and Exchange/Aubaward).

Your criteria seem to indicate that Exchange funds will only be available for those developments requesting TCAP dollars. However, TCAP can only be requested if a minimum of \$1000 in tax credits (annual) are retained.

In the case of the assisted living facilities, the syndicators refused to purchase any portion of the credits. If I have read the proposed rules correctly, this negates the use of TCAP, which then renders them ineligible for use of the Exchange dollars.

Can you offer some guidance on this?

Response: You have analyzed the selection criteria properly. You will notice that there is no requirement that a “syndicator” purchase the retained tax credits. The General Partner, a special limited partner, or some other entity can purchase the credits. You will also notice that there is no minimum amount put on the purchase price for the “retained” credits. Here’s an example: General Partner purchases the minimum amount of \$10,000 (\$1,000 x 10 years) at \$.50 a credit. The General Partner’s purchase as a funding source will be \$5,000. Having retained credits, the applicant is eligible for TCAP and Exchange funds.

May 28, 2009: I would like to see a priority created under the Tier Three category for those 2008 projects who were awarded LIHTC’s, but due to the disastrous market condition and with no hope of selling the credits returned the credits! Then subsequently re-filed the previous 2008 applications in the Feb. 2009 round. These applications for the same project in 2009 were essentially completely redone at considerable out-of-pocket expense and staff time. This special priority in Tier Three for the above described applications would allow them to receive any remaining TCAP, SWAP, and HOME funds based on their score over the regular 2009 applications.

Response: This request will be considered. However, the Addendum as adopted by the Board of Directors at its May, 2009, board meeting sets forth the selection and priority criteria for the 2009 applications.

May 29, 2009: 1. Section 2.d.vi states that “The maximum amount of the TCAP fund award will be \$1,000,000”. All other references to TCAP indicate that the maximum is \$500,000. Is the \$1,000,000 reference a “typo”? Please clarify

2. Section 2.d.iii states that “Recipients of additional tax credits will not be eligible to return any tax credits allocated or reserved by ADFA

for the purpose of receiving TCAP funds or an Exchange/ Subaward.” Please confirm that “additional tax credits” do not include the extra tax credits included in the Carryover Allocation that were awarded in August 2008 pursuant to HR 3221 (i.e., \$32,399 in the case of _____ Apartments); rather, the “additional tax credits” refer to extra credits applied for and awarded in 2009.

3. Section 2.g.i requires a written letter from the project’s most recent syndicator/investor, and 2.g.ii requires a similar rejection letter from a new syndicator. It is our understanding based on experience in other states that some syndicators are reluctant to write such a “rejection” letter because they are being scrutinized by the Federal government (i.e., banks that took “bailout funds”). We suggest that in the event an applicant attempts to get such “rejection” letters and fails, the applicant be allowed to submit a sworn statement that spells out what they have done to attempt to satisfy this requirement, and that this sworn statement will be deemed by ADFA to have met the requirements under section 2.g.
4. What are the terms for the TCAP funds? Will TCAP be a loan? If so, what are the interest rate and term, will it be “hard debt” or a cash flow loan, and will it be forgivable at the end of the term? If not, will TCAP be a grant?
5. What is the proposed/estimated timeline for the ARRA funding application process, ARRA funding awards and funding disbursement for TCAP and Exchange?

Responses:

1. Yes. The maximum award for TCAP is \$500,000.
2. The “additional tax credits” referenced in Section 2.d.iii refer to any additional tax credits requested during the competitive process established under Arkansas’ Three Tier Selection Process.” Credit previously allocated are not considered as “requesting additional tax credits” since previously allocated to ownership.
3. This comment is currently under consideration. However, at this point the Authority believes that there are sufficient national syndicators to fulfill this requirement.
4. This matter is currently under consideration. The terms and conditions regarding the receipt of TCAP funding will be provided as part of instruction/procedure guidelines that will be made public prior to the June 26, 2009 training that the Authority will conduct regarding the American Recovery and Reinvestment Act.
5. TCAP awards must be made prior to September 30, 2009. The Authority anticipates that awards will be made between August 20, 2009 and September 17, 2009.

May 29, 2009: OHFA had a public input session yesterday and this first item was discussed, which I think is also applicable to ADFA. I know you mentioned that you would like to see an investor stay in these projects but I don't think that is possible for everybody. As such, I think the 1602 exchange should be your first attack.

Right now the investor base is very limited. The old investors that are still involved in tax credits have the "pick of the litter" because there are more developments that have been awarded tax credits than there are equity funds to invest in the developments. Therefore the old investors are only interested in those developments located in the best markets in the country (not Arkansas). Any investor that is considering an Arkansas development is only doing so because it needs the CRA or the pricing has been lowered so much that the IRR has started looking attractive. Unfortunately, even if all the projects lowered pricing in an attempt to attract investors, there still would not be enough equity funds to complete all of the outstanding developments in Arkansas. This is why ARRA should not be used only as gap filler due to loss in pricing. Basically there is an excess supply of tax credits available and not enough demand for them, which is what has caused the pricing to go down (if an investor can even be found). As such, ADFA has as the ability to decrease this excess supply of credits by utilizing the 1602 exchange program to its fullest extent. This will not only allow many projects to get started quickly, it will increase demand for credits and help raise pricing for future developments.

1602 Exchange

Although you do not have a solid plan for this program yet, I think you need to start some initial steps as soon as possible. Because the 1602 program is fairly strait forward, you could send an email to owners with allocations prior to 2009 similar to the following.

ADFA has decided that any owner that received an allocation of credits prior to 2009 may return said credits to ADFA in exchange for a grant in an amount not to exceed 85 percent of your current allocation times 10. The actual amount of the grant will be determined by ADFA's final underwriting and conditioned upon executing a written agreement with ADFA. Please notify ADFA as soon as possible if you wish to participate in a full or partial exchange.

This is important for the following reasons:

1. If owners have some assurance that they are going to receive the grant, they can underwrite their developments to determine whether or not the grant is going to be enough to start the development. If not, they could apply for TCAP, but would need to keep a nominal portion of their allocation to qualify.
2. If owners have some assurance that they are going to receive the grant, their lenders can continue with their underwriting and due diligence to expedite closing once the funds become available.
3. You have until the end of June to submit your application to Treasury for the initial exchange grant. Treasury has stated that subsequent applications will be accepted, but they have not specified when. Your initial application should include as much

exchanged credits as possible so that developments can get underway as soon as possible. If you plan to have one application for both TCAP and 1602, you will only be able to submit an application to treasury for the 40% of 2009 allocation. I am sure there will not be adequate time to for you to publish the application instructions, receive applications, determine how much credits will be returned for exchange and make application to treasury by the end of June. For this reason you should initiate some steps to find out which owners would like to exchange their allocation for the grant, which will allow you to apply to treasury for a greater amount of grant funds by the end of June.

4. This will decrease the supply of credits available to investors and increase demand.

This program does not mention anything about complying with the QAP as long as section 42 is met. It also does not require a competitive process.

Our developments are aq-rehab of RD properties. RD cannot transfer until all sources of funding are known, and then it must be underwritten, sent to DC, reviewed by their general counsel, etc... We must meet carryover by October 1st 2009. As currently outlined, it appears that we may not know exactly what type of assistance we will receive until August or September. As such we will have a very difficult time meeting carryover unless:

1. The 1602 exchange program is expedited as noted above, or
2. An additional award of tax credits is made in the near future, or
3. ADFA decides to implement a plan to swap our 2008 credit for 2009 credits.

Responses:

You request a process wherein credits can be exchanged in advance of TCAP funds and additional tax credits. The Authority's Board has determined that all available federal sources should be considered at one time when underwriting those developments applying for any one of the available sources, *i.e.*, *TCAP, Subawards, Additional Tax Credits, or Additional HOME funds*. The Authority considers this process in keeping with Section 42(m)(2) to ensure the amount of funding does not exceed that necessary for the financial feasibility of the development.

At your initial paragraph 3., you state that the Authority "has until the end of June to submit your application to Treasury for the initial exchange grant. Treasury has stated that subsequent applications will be accepted, but they have not specified when. Your initial application should include as much exchanged credits as possible so that developments can get underway as soon as possible." There is not time limit on when the Authority can make application for grants in lieu of credits other than that any subaward must be expended prior to December 31, 2010. Treasury has stated that it will accept multiple applications from the Authority. However, Section 10.d. of Treasury's guidance of May 4, 2009 states: "Federal funds cannot be drawn by the grantee from the U.S. Treasury in advance of need. The grantee shall not place in escrow or advance lump sums to project owners. Once funds are drawn from the grantee's U.S. Treasury account, **they must be expended as a subaward by the grantee within three days**

...” The Authority is establishing a process for the submission of eligible costs expended or incurred so that when it makes application to Treasury, it can expend them as a subaward within three days of receipt. With regard to the process required for RD developments, the Authority has no response to the RD review process. However, any development that must return 2008 credits because ownership believes it cannot place the development in service by December 31, 2010 or meet proof of carryover basis by October 1, 2009, that ownership must request at least \$1,000 in annual federal credits from the Authority’s 2009 state ceiling in order to be eligible for TCAP funding and a subaward.