AMERICAN RECOVERY & REINVESTMENT ACT
GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS
PRELIMINARY IMPLEMENTATION PLAN
April 7, 2009

(Attachments: Summary of TCAP, Summary of Tax Credit Exchange, General Contractor Approval Form, Form letter for Returning Credits, List of Required documents for Application).

OVERVIEW

On February 17th, the President signed the American Recovery and Reinvestment Act (ARRA) in an effort to combat the recession, stimulate the economy, and begin reinvestments in the nation's physical and economic infrastructure. The resources from ARRA, in combination with those provided by the 2008 Housing and Economic Recovery Act (HERA), provide the State of Georgia with powerful resources intended to combat current economic challenges within the Low Income Housing Tax Credit (LIHTC) program. DCA has an exciting and historic opportunity to utilize ARRA's affordable housing resources to address these issues while participating in the State of Georgia's economic recovery.

ARRA Policy

DCA's Implementation Plan for ARRA resources must consider the policy objectives and priorities which are mandated by the statute. These include the following:

Maximize the value of resources. DCA will implement policies that take into account leveraging of other funds and overall efficiency of resource utilization. DCA will reject projects and policies that deflate the value of the resources made available through ARRA or negatively impact the long term viability of the tax credit program.

Spur immediate economic activity and employment by focusing on projects that can be implemented quickly. While not every stalled project will move forward, many can be restructured to immediately start construction. The Act mandates a preference for projects which are "shovel ready". DCA will define "shovel ready" projects as a tax credit development that can actually commence construction within certain prescribed timeframes outlined by DCA. DCA will develop specific milestones and measures to project the expected date that a project can commence construction and determine whether it meets the immediacy required by the Act.

Improve the quality, sustainability, energy efficiency and long term impact of projects developed with ARRA resources. These one-time funds create a special opportunity to structure transactions that can weather the difficult economic headwinds currently facing Georgia. It will give DCA and its affordable housing development partners the opportunity to look creatively at new and innovative ways to foster the long term improvement and viability of the tax credit program.

Increase the transparency and accountability of both DCA and ARRA recipients' utilization of resources which have been entrusted to us by the United States Government.

DCA Policy Objectives

DCA carefully reviewed the needs of the Georgia affordable housing program and formulated specific policy objectives which have been used in the formulation of the Georgia Implementation Plan for ARRA programs. These policy objectives include, but are not limited to the following:

- DCA believes that continued inclusion of syndicators in the funding of projects is a priority under ARRA and is essential to the long term viability of the Tax Credit Program. Therefore, projects with syndication participation will generally be given priority in funding decisions.
- DCA also believes that maintaining competitive pricing of tax credits is essential to the continued viability of the program. Therefore, DCA will consider whether proposed pricing is reasonable in determining whether a project is eligible for ARRA funding. DCA will utilize pricing data for similar projects as well as the 85 cent standard established through the ARRA exchange in determining whether the pricing of credits is reasonable.
- All projects that request ARRA funds will undergo rigorous scrutiny to determine the reasonableness of all budgeted items and to ensure that all funds are used in the manner intended by the Act.
- DCA will require that all projects that receive ARRA funding undergo a third party review of projected construction costs to ensure reasonableness of the construction budget. An itemized estimation of costs will be required to be submitted with any Application for ARRA resources.
- DCA may require the incorporation of additional design modifications for the purpose of reducing utility costs, increasing energy efficiency and/or improving feasibility, as a condition of funding.
- Regardless of whether a project received an allocation of credits, DCA reserves the right to determine that any project requesting funds does not constitute the best use of ARRA resources.
- Projects that fail to meet milestones and/or DCA deadlines may be replaced with projects that can meet projected start dates.
- Delays in commencement of construction may result in the immediate withdrawal of funding.

- Existing government funding sources that have been committed to a project must remain in place unless specifically waived by DCA. These sources include HUD, USDA and HOME funding. DCA believes that ARRA is meant to provide gap financing and not supplant long standing programs for affordable housing financing. DCA will also consider whether a project is eligible for ARRA funding from another source in determining a project's allocation of funds.
- All applicants and general contractors are required to take DCA's federal compliance training prior to the commencement of construction. Applicants and general contractors will also be required to participate in a pre construction conference prior to the start of construction.
- All general contractors of a project funded by ARRA are required to undergo an audit of actual costs and provide a general contractor cost certification of costs at the time of project completion. DCA will publish additional guidance on the Contractor Cost Certification process.
- Construction contracts should have a fixed pricing structure.
- All projects which have previously received a tax credit allocation will be required to include an update to the original DCA market study with their application for ARRA funds. That update must address whether material adverse changes including, but not limited to increased unemployment, loss of businesses or foreclosures will impact the feasibility of the proposed project.
- Projects located at or near areas with high foreclosure rates will be carefully scrutinized. New construction projects at or near abandoned, foreclosed or underutilized existing housing will be carefully scrutinized to determine whether funding would further negatively impact proposed neighborhoods.
- DCA will determine ARRA funding and financing structures through a more sustainable underwriting model. The volatility of market conditions makes effective estimation of rents, taxes, utilities and similar variables difficult. Therefore, DCA will attempt to address these issues through sensitivity analysis of rent and expense variations as well as the adequacy of reserve requirements. Applicants should expect to see their pro forma modified in order to insure that developments funded with ARRA funds will be financially sound and able to handle periodic changes in rent and expense structures.
- Projects that receive ARRA funds will be reviewed to ensure that there is not an undue enrichment to any party to the transaction. This review may result in the limitation of unrestricted, net cash flow annual return. DCA may also require that a portion of cash flow be utilized to further fund reserves, lower rents or reduce the principal amount of the ARRA loan. This limitation is made to prevent the Applicant from being unduly enriched and will not be utilized to limit the feasibility of the project.
- Except as set forth in this Notice or in future DCA guidance, all pro formas should incorporate the policies in the 2009 QAP relating to tax credits allocations and HOME funding.

- Additional costs associated with this funding will be published in a separate document.

Accountability and Transparency Requirements

Additional reporting requirements related to the accountability and transparency requirement of the law will be required. Applicants utilizing ARRA funds must familiarize themselves with these regulations.

DCA is committed to developing transparent, merit-based selection criteria that will guide our staff in using discretion and flexibility in committing, obligating, or expending funds under ARRA. Such criteria shall be consistent with legal requirements, may be tailored to the particular funding activity and shall be formulated to ensure that the funding furthers the job creation, economic recovery, focus on energy conservation and other purposes of ARRA.

As required by ARRA and the State of Georgia, no considerations contained in oral or written communications from any person or entity concerning particular projects, applications or applicants for funding shall supersede or supplant consideration by our staff of such projects, applications or applicants for funding pursuant to applicable merit based criteria

DCA has been notified by the White House that all communications from a lobbyist concerning the commitment, obligation, or expenditure of funds under the Recovery Act for particular projects, applications, or applicants must be in writing and shall be posted publicly by the receiving agency or governmental entity on its recovery website within 3 business days after receipt of such communication.

All projects that receive ARRA funds must provide access to the Office of the State Inspector General to all records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence and any other materials related to the use of funds.

All Contractors, Subcontractors and consultants must have the following provision in their contracts:

> a) Contractor agrees to make available, at all reasonable times, during the term of this contract plus an additional three (3) years thereafter, any and all records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, and other materials relating to this contract, for inspection by the Office of the State Inspector General.
>
> b) Contractor agrees to include the substance of this clause in all subcontracts related to this contract."

Recipients of ARRA funds should be knowledgeable about the federal and state websites that will utilized for tracking use of funds and providing guidance on program requirements. The federal website is located at Recovery.gov. There will also be a state website to review Georgia's progress in utilizing these funds. DCA will also have an ARRA site which should be operational in the near future. DCA will post all program changes, guidance and other instructional information on its website.

Several caveats and notes of caution are in order.

A great deal of uncertainty remains on requirements for implementing ARRA programs. The two most important affordable housing features of ARRA, the ability to monetize portions of the state's LIHTC ceiling and new federal Tax Credit Assistance Program (TCAP) funding, will require regulatory guidance from both the United States Departments of Treasury and Housing and Urban Development (HUD). DCA is keenly aware that many issues may need additional clarification or modification as specific rules, regulations, and processes are clarified by the oversight federal and state agencies. While we are confident that the basic framework of this plan will remain intact, specific details will need to be updated, reconsidered, and changed as the federal requirements become clear. In addition, a great deal of uncertainty remains in the tax credit market. DCA will need to retain the flexibility to continually review and update these policies to ensure that ARRA resources are utilized in the most efficient and positive way in accordance with both the stated and underlying purpose of the ARRA statute and the policies of the State of Georgia.

The different funding opportunities provided by ARRA, along with the Neighborhood Stabilization Program (NSP) funding provided by HERA, and the traditional resources such as the Low Income Housing Tax Credit Program and HOME Investment Partnership Program each have specific commitment and expenditure timelines and varying eligibility and compliance requirements. In order to make efficient and full use of these resources, DCA will explicitly reserve the ability to reapportion funds and funding sources within and between the different programs under both HERA and ARRA.

In spite of these challenges, the Georgia Department of Community Affairs is committed to providing as much clarity to the public as possible of the direction, thinking, and planning efforts surrounding the implementation of provisions of ARRA.

DCA Funding Priorities

DCA has established the following prioritization of projects eligible for ARRA resources:

- 2007 and 2008 projects that were selected for an allocation of 9% credits, have obtained a semi firm commitment for the sale of federal and state credits, and which can be shovel ready on or before September 1, 2009.

- 2008 projects that are currently on the DCA waiting list and are awarded credits on or before May 15, 2009. At this time, DCA has allocated all of its 2008 credits and forwarded committed some of its 2009 credits. The only source of credits for these projects will be from 2008 projects which elect to return unsyndicated credits and which DCA deems to be ineligible for the resources from monetized credits. Only projects that have a semi firm commitment for the sale of credits will be eligible if credits become available. These projects will also be required to meet the shovel ready requirements of construction commencement prior to September 1, 2009. If credits become available, DCA will utilize waiting list ranking as an additional competitive factor to allocate funds. Each project will be contacted in the order of the waiting list rankings and given a short period of time to present evidence that they have a syndicator and that they can meet the shovel ready requirement.

- 2009 Projects that have been selected for funding under the QAP Supplemental Set aside and which can be shovel ready on or before September 1, 2009.

- 2007 and 2008 Projects that have returned their credits and which DCA determines are eligible for an allocation of TCAP and/or monetized credit funds. These projects will also be required to be shovel-ready by September 1, 2009.

- 9% projects that are selected for funding in the 2009 competitive round are eligible for ARRA gap funds. Available funds will be allocated competitively based on the highest scoring applications. Applicants can include gap funds in their submitted applications. However, DCA cannot determine at this time the amount of funds that will be available. A project that is feasible as a result of gap funds will not be allocated credits if insufficient ARRA funds are available to meet the pro forma projections.

- 4% tax credit/tax exempt bond projects which can be shovel ready on or before September 1, 2009, have a semi firm purchaser of federal and state credits as well as a credit enhancer for the Bonds.

DCA has established the factors for competitively allocating ARRA resources:

- Priority categories as set forth above
- Shovel ready status
- Firmness of Syndicator financing,

- Amount of gap financing required
- Syndicator pricing
- Feasibility/sensitivity analysis
- Experience in utilizing federal financing

Use of Funds

- Construction/Permanent Financing
- Construction only financing provided that permanent financing allows the repayment of construction financing no later than March 1, 2010.
- Grants for the Incorporation of energy efficiency components
- Other uses as approved by DCA

General Requirements for ARRA Funds

The following are terms that will apply to projects selected for an award of ARRA funds:

- Cash flow Loans, Amortizing or balloon loans for a minimum term of fifteen years as structured during the DCA underwriting process.
- For gap financing, per project limit of $3.5 million generally, although DCA may increase the amount of funds allocated at its discretion.
- Real estate tax and insurance will be escrowed with six (6) months of a cushion reserves funded at closing.
- Minimum Six months of operating expenses, excluding replacement reserves are required to be funded upon the closing of the loan. DCA may redirect any cash flow payments from loans to reserve accounts to ensure sustainability of the project.
- One year of replacement reserves are required to be funded upon the closing of the loan.
- Rents and expenses will be subjected to a sensitivity analysis to ensure that there is generally a 5-10% cushion that will contribute to the sustainable viability of the project.
- DCA must approve the general contractor. Applicants will be required to utilize the DCA general contractor approval application.
- TCAP and Exchange funds will ultimately trigger cross-cutting federal requirements similar to those applied to HOME funding. As a result, developers should assume that compliance with Davis Bacon & Related Acts (DBRA), the Uniform Relocation Act (URA), the National Environmental Protection Act (NEPA), and Uniform Federal Accessibility Standards (UFAS) will be required. The applicability of these standards has specific implications for any applicant seeking ARRA funds that will need to be addressed in revising, preparing, and submitting applications.
- At this time, DCA intends to secure ARRA investments with a mortgage loan and regulatory agreement.

- Funds will be disbursed through a draw process similar to DCA's HOME loan draw process. Information related to DCA's HOME loan draw process will be posted in the next few weeks.

Accountability Requirements for ARRA funded Projects

- All projects will be required to undergo an independent front end analysis of hard construction costs to ensure the reasonableness of the construction budget.
- All projects will be required to undergo a DCA energy audit to ensure that adequate energy efficiency components have been included in the design.
- All projects will be required to have an audit of the General Contractors' cost at project completion and the General Contractor will need to provide a cost certification.
- All projects will be required to contract with a DCA approved third party inspector that will inspect construction progress prior to release of draws.
- All change orders will need to be approved by DCA architectural staff.
- All projects will be required to have an accessibility inspector inspect the project to ensure compliance with federal accessibility standards

ARRA PROGRAMS

DCA is pleased to announce plans for four key programs that will implement the use of ARRA funds:

9% Tax Credit Assistance Program (TCAP)
(Approximately $54 million)
(Summary of statutory requirements is attached)

This program will provide financing for projects that have received an award of tax credits prior to September 30, 2009. Generally, these funds will be used as gap financing for 2007, 2008 and 2009 low income housing tax credit projects that have successfully marketed the sale of an allocation of 9% tax credits.

DCA may, but is not obligated to set aside the sum of $15 million dollars or such lesser sum as it deems appropriate for gap financing for 2009 projects.

(Note: DCA may utilize TCAP funds as the sole source of financing in small rural projects and to provide gap financing for a limited number of bond projects under the 4% Tax Credit Assistance Program.)

9% Tax Credit Exchange Program
(Summary of statutory requirements is attached)

This program allows applicants that received an allocation of 9% LIHTC award from 2007 or 2008 to return allocated credits to DCA without penalty. Projects that receive an allocation of credits in the 2009 competitive round or are selected from the 2008 9% tax credit waiting list will generally not be eligible to return credits. DCA strongly urges applicants with unsyndicated credits to return those awards quickly. However, in order to apply for ARRA funds, DCA will require that credits be returned no later than April 28, 2009.

DCA reserves the right to determine that returned credits can be utilized for projects with adequate syndicator financing which have been selected or which are on the waiting list. **There is no guarantee that any project that returns credits will be selected for additional funding with ARRA resources**.

All funds received by DCA as a result of this Credit Exchange will be utilized to establish a fund for use as for gap and/or full funding of proposed projects.

Applicants that returned their credits and apply for funding under the DCA Credit Exchange Program will be required to submit documentation satisfactory to DCA that they have made a good faith effort to syndicate any returned credit reservations on reasonable terms. DCA may also require a meeting with an applicant to discuss further the efforts made to find syndication. Applicants will need to provide the name and contact number of the syndicator as well as a narrative of contacts, discussions and information.

Projects that return credits and apply for funding under the Exchange Program will be analyzed to determine whether DCA will allocate ARRA funds. DCA believes that the risk associated with 100% DCA financed deals is significantly higher than other financing structures. Therefore, it will closely review each element of a deal that has been rejected from all syndicating sources prior to approving ARRA funding. Applicants that seek funds under this structure should be aware that their burden of proving need, feasibility and appropriateness of funding the transaction will be significant.

Projects that are fully funded by DCA may be required to reduce their developer fee or defer their developer fee. In addition, a portion of the developer fee may be required to be deposited into a "Compliance Reserve" account to facilitate the recapture of funds.

<u>4% Tax Credit Assistance Program</u>

This program will provide gap financing (to the extent that resources are available) for tax exempt bond projects seeking 4% tax credits from DCA. DCA may utilize either TCAP funds or Monetized Funds. This gap program will be administered substantially the same as the 9% TCAP program. Please note that DC has determined that selected 9% projects will have a priority in seeking TCAP funds. Applicants considering applying for funds from this program should consider the implications of cross cutting federal requirements and assume that any assistance will trigger compliance with Davis Bacon, Federal Relocation, NEPA and UFAS. DCA will only accept applications where applicants can show a semi firm equity commitment as well as a credit enhancer is working to structure the project.

<u>Georgia Affordable Housing Preservation and Innovation Program</u>

This program will, subject to compliance with federal regulations, provide funding for the preservation of existing affordable multifamily housing developments across the state whose viability is threatened, to invest in additional production under the three programs outlined above, or to invest in other innovative efforts to improve the viability of the state's affordable housing stock in accordance with statutory, program and state policies and requirements**.** Resources from both TCAP and the Exchange Program may be utilized in this program.

DCA intends to monetize up to 40% of the available 2009 credit ceiling and 40% of any 2009 national pool allocation it receives. It is estimated that this will produce approximately $75 million in Monetized Credits to invest in additional efforts to preserve and produce affordable housing. Subject to the regulatory guidance received from Treasury and HUD, DCA intends to use these funds on efforts, prioritized in the order listed below, that:

1. Reinvest in existing developments that could, with appropriate infusion of rehabilitation funding, be preserved for at least 15 years without the need for a full preservation transaction.

2. Provide additional gap financing for tax exempt bond financed developments with actual equity commitments.

3. Provide additional gap financing to developments receiving 9% LIHTC awards from 2009.

4. Provide additional gap funding support to unique, innovative, or critical mission driven projects seeking resources in the other programs outlined above.

ARRA anticipates the award of Monetized Credit funds to "qualified low income buildings with *or without*" an allocation of tax credits (emphasis added). ARRA is silent, however, on the time period within which an assisted building must have received its allocation of tax credits, and it further limits a state's ability to provide such funds to buildings without a tax credit allocation to those situations in which the state can "[determine] that such [an award] will increase the total funds available to the state to build and rehabilitate affordable housing."

To make awards to developments that do not have tax credit allocations DCA must determine that such awards will increase total funds to the state to fund affordable housing. In that context, the following should be noted:

- Efforts to strengthen the existing portfolio can have a direct impact on the availability of equity investments needed to support the 2009 tax credits that will be awarded.

- While not required by the LIHTC provisions of ARRA, such an effort will further other goals central to state and federal implementation of ARRA. Specifically, rehabilitation of existing housing can be done more quickly than development of new housing, speeding the economic impact of this capital investment. Rehabilitation is also “greener” than new construction in most cases and will be done in a manner to maximize cost effective energy efficiency, creating additional benefits to the nascent “green economy.”

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PUBLIC INPUT SOUGHT & NEXT STEPS

This document is DCA’s preliminary implementation plan, but specifics will undoubtedly change based on feedback from the public, the regulatory frameworks provided by the federal government, and ongoing changes in the economic environment. In the upcoming weeks, DCA will provide additional guidance on the programs outlined above.